

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

ORIGINAL

77-1311

United States Court of Appeals
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Appellee,
against

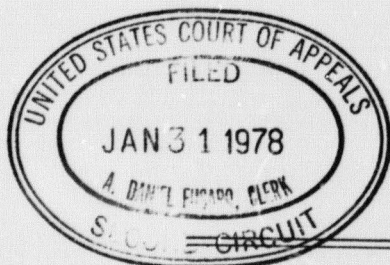
SOL RAUCH, MARC RAUCH, LAWRENCE CORSA,
Defendants-Appellants,
and

MARVIN URBAN, a/k/a "MARTY GORDON",
Defendant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPENDIX OF APPELLANT SOL RAUCH

BRADY, TARPEY, HOEY, P.C.
Attorneys for Appellant
Sol Rauch
84 William Street
New York, N.Y. 10038



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PAGINATION AS IN ORIGINAL COPY

DOCKET ENTRIES--SOL RAUCH

U.S. TITLE SECTION		OFFENSES CHARGED		JUVENILE		U.S. MAG. CASE NO.																																				
18: §1341 & 2		Purported to engage in		15																																						
15: § 77q(a) & 77x		the business of selling																																								
		rare U.S. coin portfolios.																																								
<table border="1"> <tr> <td>ARREST</td> <td>INDICTMENT</td> <td>ARRAIGNMENT</td> <td>TRIAL</td> </tr> <tr> <td>U.S. Custody Section</td> <td>Information</td> <td>7/21/76</td> <td>11/29/76</td> </tr> <tr> <td>Summons Served</td> <td>3-8-77 X</td> <td></td> <td>2/23/77 X</td> </tr> <tr> <td>Foot Print & MDC</td> <td>3-8-77 X</td> <td></td> <td></td> </tr> </table>								ARREST	INDICTMENT	ARRAIGNMENT	TRIAL	U.S. Custody Section	Information	7/21/76	11/29/76	Summons Served	3-8-77 X		2/23/77 X	Foot Print & MDC	3-8-77 X																					
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OFFENSE (In Complaint)				WAIVED	NOT WAIVED																																					

U.S. Attorney or Asst.

Gary Woodfield

ATTORNEYS

Samuel H. Goldman -

225 Broadway -

New York NY -- 233-4530

SOL RAUCH PRO SE

* Show last names and suffix numbers of other defendants on same indictment/information

MARC RAUCH2; LAWRENCE CORSA 3; MARVIN URBAN 4;

DATE	(DOCUMENT NO.)	PROCEEDINGS
4-30-76		Before BRAMWELL, J - Indictment filed - ordered sealed by the Court.
7/13/76		Before PRATT, J. - Case called. Defts & Counsel present. Indictment ordered unsealed by the Court.
7/21/76		Before PRATT, J - Case called. Defts & Counsel present. Defts arraigned & after being advised of their rights & on their own behalf enters a plea of not guilty- Bail set at 5,000P.R. adjd to 8/18/76 at 9:30 a.m. for S/C- Bail limits extended to Jamaica.
7/21/76		Notice of Appearance filed.
8-18-76		Before Pratt, J - case called - deft & atty present - adjd to 9-21-76 at 9:30 am for criminal status conference and motions.
9/3/76		Before PRATT, J.- Case called. No appearances. Adjd to 9/21/76 at 1:30 p.m. to fix trial date, etc.

Docket Entries--Sol Rauch

	(DOCUMENT NO.)	(a) (b) (c) (d)
9-21-76	Before PRATT, J. - Case called. Deft & counsel present. Adj'd to 11-29-76 for trial.	
10-22-76	Notice of motion filed, Memorandum of Law in support of motion and affidavit of Sol Rauch, for dismissal of the indictment, to permit inspection of minutes of the Grand Jury and for other relief (ret. Nov. 1, 1976 at Southern District) before Judge Gerald Goettel.	
11-10-76	Govts Memorandum of Law filed in opposition to defts motion to dismiss	
11/17/76	By GOETTEL, J. - Order to show cause filed ordering that the deft appear before this Court on 11/19/76 at 10:30 a.m. to show cause for why he should not be punished for contempt of court, pursuant to T-18:401(3) and 42(b).	
11/29/76	By GOETTEL, J. - (Affidavit filed) & Continuance granted upon consent of the Govt. New Trial date to be set by Judge Pratt.	
11/29/76	Before GOETTEL, J. - Case called. Deft present, counsel present. Defts motion for adjournment argued - motion granted. Order signed on back of affidavit. Case referred back to Judge Pratt for all purposes.	
XXXXXXXXXXXXXXXXXXXXXXXXXXXX fy		
1-21-77	Defts Rauch's memo of law to dismiss filed.	
2-10-77	Before PRATT, J. - Case called for hearing. Hearing ordered and begun, hearing concluded and decision reserved	
2-15-77	By PRATT, J. - Memo and order dtd. 2-14-77 denying defts motion to dismiss and setting 2-24-77 for a pre-trial conf etc., filed.	
2-22-77	Govt's request to charge filed.	
2-23-77	Notice of appeal filed. Duplicate of Notice of Appeal mailed to the C of A with copy of docket entries.	
2-23-77	Before PRATT, J. - Case called for deft URBAN's motion to sever, motion argued and granted. Trial ordered and begun and jury selected and to cont after conclusion of civil case 71-C-1522	
3-4-77	Notice of motion ret. 3-8-77 with memo of law to dismiss filed.	
3-8-77	SUPERSEDING INFORMATION filed. (S). Waiver of indictment filed.	
3-8-77	Defendant Sol Rauch's supplemental memo of law filed.	
3-9-77	BY PRATT, J. - order dtd 3-8-77 denying defendants' motion to dismiss the indictment etc. filed on the back of the notice of motion to dismiss filed 3-4-77.	
3-9-77	Copy of scheduling order from the Court of Appeals filed.	
3-8-77	Before Pratt, J. - case called: Deft Sol Rauch present without counsel - deft Marc Rauch present with counsel - deft Lawrence Corsa not present - counsel for Mr. Corsa present. Pre-trial conference held and concluded. Deft Sol Rauch and Marc Rauch	

Docket Entries--Sol Rauch

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
3-8-77	...CONTINUED..... sign waivers of indictment . Trial to commence on 3/14/77 at 1:00 P.M.				
3-14-77	Sten. transcript dtd. 3-7-77 filed.				
3-14-77	Sten. transcript dtd. 2-19-77 filed.				
3-14-77	Notice of appeal filed.				
3-14-77	Before PRATT,J.- Case called for trial , Trial resumed and cont to 3-15-77				
3-15-77	Before PRATT,J.- Case called for trial and trial resumed, trial to cont on 3-16-77				
3-16-77	Before PRATT,J.- Case called for trial and trial resumed Trial to cont on 3-17-77				
3-17-77	Before Pratt,J.- case called- defts and counsel present-trial resumed. Trial to continue on 3/18/77 at 10 AM.				
3-18-77	Before PRATT,J.- Case called for trial and trial resumed. Trial to cont on 3-21-77				
3-21-77	Before PRATT,J.- Case called for trial and trial resumed, trial to cont on 3-22-77				
3-23-77	Before Pratt,J.- case called - defts and counsel present-trial resumed - trial to resume on 3/25/77 at 9:30 AM.				
3-25-77	Before PRATT,J.- Case called for trial and trial resumed and to xxx cont on 3-28-77				
3-28-77	Before PRATT,J.- Case called for trial and resumed, trial to cont on 3-29-77				
3-29-77	Before PRATT,J.- Case called for trial, and resumed, Govt rests, defts motion to xxx dismiss argued denied, trial to cont 3-30-77				
3-30-77	Before PRATT,J.- Case called for trial and resumed, Trial to cont on 3-31-77				
3-31-77	Before PRATT,J.- Case called for trial and resumed, trial to cont on 4-1-77				
4-1-77	Before PRATT,J.- Case called for trial and resumed, trial to con on 4-5-77				
4-5-77	Before PRATT,J.- Case called for trial and resumed, trial to cont on 4-6-77				
4-7-77	Before PRATT,J.- Case called for trial and resumed, Deft rests Govt rests, Defts motion to dismiss for a directed verdict and a mistrial, motion argued and denied. Trial to cont on 4-8-77				
4-8-77	Before PRATT,J.- Case called for trial and resumed, Govt sums up, defts sum up. The court charges jury and trial to resume on 4-11-77				
4-11-77	Two orders pf sustenance filed.				
4-11-77	Before PRATT,J.- Case called for trial and resumed, Jury returns with a verdict of guilty and finds defts M. Rauch, S. Rauch & L. Corsa guilty on cts. 1,2,3,4,5,6,8,9,10,11,12,13,14,& 15. Count 7 dismissed by the Court . Trial xx concluded. Jury discharged. Bail limits to cover continental USA. Sentences adjd w/o date.				

Docket Entries--Sol Rauch

V. EXCLUDABLE DELAY

PROCEEDINGS (continued)

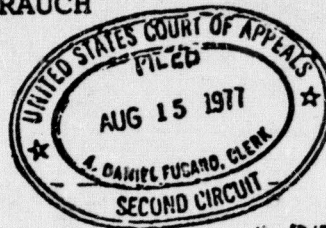
(a) (b) (c) (d)

(Document No.)		(a)	(b)	(c)	(d)
4-11-77	By PRATT, J.- Order of sustenance filed.				
4-11-77	Form of verdict filed.				
4-6-77	Before PRATT, J.- Case called for trial and resumed, trial to cont on 4-7-77				
4-12-77	Civil appeal scheduling order filed.				
4-14-77	Stenographer's transcripts dated March 14, 1977 (1 PM), March 15, 1977 (10 AM), March 16, 1977 (9:30 AM), March 17, 1977 (9:15 AM), March 18, 1977 (10 AM), March 21, 1977 (10 AM), March 22, 1977 (10 AM), March 25, 1977 (9:45 AM), March 28, 1977 (10 AM), March 29, 1977 (9 AM), March 30, 1977 (10 AM), March 31, 1977 (9 AM), April 1, 1977 (10 AM), April 5, 1977 (10 AM), April 6, 1977 (9:30 AM), April 7, 1977 (10 AM) & April 8, 1977 (9:05 AM) filed. (17 transcripts)				
4-25-77	Stenographer's transcript dtd 4-11-77 at 9 AM filed.				
6-20-77	Sten. transcript dtd. 3-8-77 filed.				
6-24-77	Notice of appearance filed.				
6-30-77	Stenographer's transcript dtd 3-1-77 at 4:15 PM filed.				
7-7-77	Before Pratt, J.- case called - defts Sol Rauch, Marc Rauch & Lawrence Coraa and counsels present - deft Sol Rauch sentenced to imprisonment for a period of 3 years on each of counts 1,2,3, 4,5,6,8,9,10,11,12,13,14,15 - sentence on each count to run concurrent with each other - deft also fined \$1,000.00 on each of counts 1,2,3, 4,5,6,8,9,10,11,12,13,14,15 for a total fine of \$14,000.00 - stay of execution of prison sentence pending the outcome of appeal - on motion of AUSA De Petris the underlying indictment is dismissed.				
7-7-77	Judgment and commitment filed. Certified copies to US Atty, Probation and US Marshal.				
7-7-77	Judgment and commitment filed.				
7/12/77	Notice of appeal filed.jlj				
7/12/77	Certified copies of docket entries and duplicate copy of Notice of Appeal mailed to C of A.jlj				
8-10-77	Scheduling order filed that the record on appeal be docketed on or before 8-15-77.				
8/12/77	Stipulation from C of A that the appeal of deft from an order of the USDC denying the motion of deft for an order dismissing the indictment on the grounds of prosecutorial misconduct, is withdrawn.jlj				
8-12-77	Transcript filed dated July 7, 1977.				

A TRUE COPY ATTEST
 8/12/77
 LEWIS ORGEL, CLERK
 BY *[Signature]* DEPUTY CLERK

A 4a

DOCKET ENTRIES--MARC RAUCH



CRIMINAL DOCKET - U.S. District Court

TYPE OFFENSE PO ☐ JUDGE/MAGISTRATE Assign J U.S.
 OR OFFENSE MO ☐ 0721
 SO MEANOR M ☐ 207 L
 FELONY For ☒ District Office

76 CR 3082 (S)

Case Filing Date
Mo Day
76 30

76 308 2

U.S. TITLE/SECTION 18: 1341 & 2
 OFFENSES CHARGED Deft engaged in the busi
 15:77q(a) & 77x of selling rare U.S. Co
 portfolios.

APPEAL

CLOSED

U.S. MAG. CASE NO. 76-308-2
 BAIL - RELEASE
☐ AMT ☐ Fugitive
☐ Denied ☐ Sel ☐ Pers. Recog
☐ PSA
 \$ 000
 Date ☐ 10% Deposit
☐ Surety Bond
☐ Bed Not Made ☐ Co's Lab
☐ Status Changed (See Docket) ☐ 3rd ☐ Pny Curt ☐ Other

H. KEY DATES & INTERVALS

ARREST or	INDICTMENT	ARRAIGNMENT	TRIAL
U.S. Custody Began	High Risk Date	Information	Trial Set For
Summons Served	Indict Waived	7/21/76	4/29/76
First Appearance	In Charging District	3-8-77	3-8-77
	Superseding Indict/info	3-8-77	
	Superseding Counts		

SENTENCE
 Disposition of Charges
☐ Convicted ☐ On All Chs Yes
☐ Acquitted ☐ On Let. Set Offenses
☐ Dismissed ☐ WOP ☐ WP
☐ On Government Motion

MAGISTRATE		OUTCOME	
Search Warrant	Issued	DATE	INITIAL/NO.
Summons	Issued	DATE	INITIAL/NO.
Arrest Warrant	Served	DATE	INITIAL/NO.
COMPLAINT		DATE	INITIAL/NO.
OFFENSE (In Complaint)		DATE	INITIAL/NO.

U.S. Attorney or Asst.

ATTORNEYS Defen: ☒ CJA, ☐ Ret, ☐ Waived ☐ Set ☐ Note / Order PD ☐ CD

Gary Woodfield
Ron De Petris

Samuel H. Goldman
225 Broadway
New York NY 233-4530

* Show full names and serial numbers of other defendants on same indictment/information.

SOL RAUCH 1; LAWRENCE CORSA 3; MARVIN URBAN 4

DATE	DOCUMENT NO.	PROCEEDINGS	EXCLUDABLE DELAY
1 4-30-76		Before BRAMWELL, J - Indictment filed -ordered sealed by the Court.	
2 7/13/76		Before PRATT, J. - Case called. Defts & Counsel present. Indictment ordered unsealed by the Court.	
3 7/21/76		Before PRATT, J.- Case called. Defts & Counsel present. Defts arraigned & after being advised of their rights & on their own behalf enter pleas of not guilty. Bail set at \$5,000 P.R. Adj'd to 8/18/76 at 9:30 a.m. for S.C - Bail limits extended to Jamaica as to defts S. Rauch, M. Rauch & L. Corsa	
4 7/21/76		Notice of appearance filed.	
5 8-18-76		Before Pratt, J - case called - deft & atty present - adj'd to 9-21-76 at 9:30 am for criminal motions and conference.	
6 9-21-76		Before PRATT, J. - Case called. Deft & counsel presen. Adj'd to 11-29-76 for trial.	
7 11/11/76		Notice of motion to dismiss the indictment returnable 11/12/76 before Judge Goettel of the Southern District filed.	

IV. PROCEEDINGS (continued)		PAGE TWO	V. EXCLUDABLE DELAY		
DATE	DOCUMENT NO.		Excluded From Case (a)	Excluded From Case (b)	Excluded From Case (c)
11/17/76		By GOETTEL, J. - Order to show cause filed ordering that the deft appear before this Court on 11/19/76 at 10:30 a.m. to show cause for why he should not be punished for contempt of court, pursuant to T-18:401(3), and 42(b).			
11-23-76		Request to examinex, inspect and copy papers etc. and records of Federal Coin Reserve			
11/26/76		Affadvit : Samuel H. Goldman filed and forwarded to chambers.			
11/29/76		By GOETTEL, J.- Affidavit filed and continuance granted upon consent of the Govt. New Trial date to be set by Judge Pratt.			
11/29/76		Before GOETTEL, J. 0- Case called. Deft not present. Counsel present. Defts motion for adjournment argued - motion granted. Case referred back to Judge Pratt for all purposes.			
12-20-76		Notice of motion ret. 1-6-77 for an order dismissing the indictment filed.			
1-3-77		Affidavit of USA in opposition to motion to dismiss filed.			
1-21-77		Deft Rauch's memo of law to dismiss filed.			
2-10-77		Before PRATT, J.- Case called for hearing- hearing ordered and begun, hearing concluded and decision reserved			
2-15-77		By PRATT, J.- Memo and order dtd. 2-14-77 denying defts motion to dismiss and setting a pre-trial conf for 2-24-77 etc., filed.			
2-22-77		Govts request to charge filed.			
2-23-77		Notice of appeal filed. Duplicate of Notice of Appeal mailed to the C of A with copy of the docket entries.			
2-23-77		Before PRATT, J.- Case called for deft URBAN 's motion to sever, motion argued and granted. Trial ordered and begun and jury selected and to cont after civil case 71-C-1522			
3-4-77		Notice of motion ret. 3-4-77 with memo of law to dismiss filed.			
3-8-77		Superseding information filed (S) Waiver of indictment filed.			
3-9-77		Defendant Sol Rauch's supplemental memo of law filed.			
3-9-77		BY PRATT, J.- order dtd 3-8-77 denying defendants' motion to dismiss the indictment etc. filed on the back of the notice of motion to dismiss filed 3-4-77.			
3-9-77		Copy of scheduling order from the Court of Appeals filed.			
3-8-77		Before Pratt, J.- case called: Deft Sol Rauch present without counsel - deft Mark Rauch present with counsel - deft Lawrence Corsa not present - counsel for Mr. Corsa present. Pre-trial conference held and concluded. Deft Sol Rauch's motion to dismiss is denied by the Court. Defts Marc and Sol RAUCH sign waivers of indictment: Trial to commence on 3/14/77 at 1:00 PM.			
3-14-77		Sten. transcript dtd. 3-7-77 filed.			
3-14-77		Sten. transcript dtd. 2-10-77 filed.			
3-14-77		Before PRATT, J.- Case called for trial, Trial resumed and to cont to 3-15-77			
END RESTITUTION PAYMENTS					
DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

Docket Entries--Marc Rauch

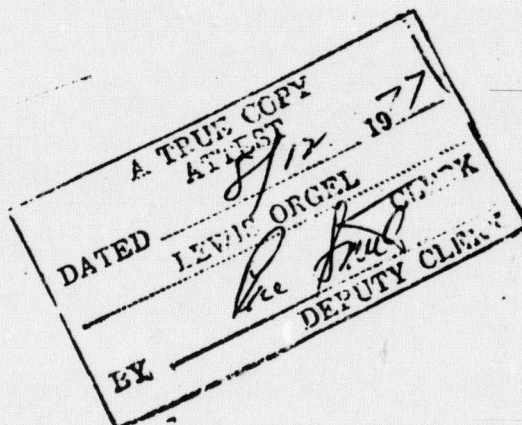
DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
	(Document No.)				
30 3-15-77	Before PRATT,J.- Case called for trial and trial resumed and trial to cont on 3-16-77				
31 3-16-77	Before PRATT,J.- Case called for trial and trial resumed and trial to cont on 3-17-77				
32 3-17-77	Before Pratt ,J.- case called - deft and counsel present -trial resumed. Trial to continue on 3/18/77 at 10 AM.				
33 3-18-77	Before PRATT,J.- Case called for trial and trial resumed, trial to cont on 3-21-77				
34 3-21-77	Before PRATT,J.- Case called for trial and trial resumed and trial to cont on 3-22-77				
35 3-22-77	Notice of motion ret. 3-23-77 with memo of law to quash subpoena filed.				
36 3-24-77	Notice of motion ret. 3-23-77 with memo of law to quash subpoena filed.				
37 3-23-77	Before Pratt, J.- case called-defts and counsel present-trial resumed - trial to resume on 3/25/77 at 9:30 A.M.				
38 3-25-77	Before PRATT,J.- Case called for trial and trial resumed and to cont on 3-28-77				
39 3-28-77	Before PRATT,J.- Case called for trial and resumed, trial to cont on 3-29-77				
40 3-29-77	Before PRATT,J.- Case called for trial, trial resumed, Govt rests, defts motion to dismiss argued and denied, Trial to cont on 3-30-77				
41 3-30-77	Before PRATT,J.- Case called for trial and resumed, Trial to cont on 3-31-77				
42 3-31-77	Before PRATT,J.- Case called for trial and resumed, Trial to cont on 4-1-77				
43 4-1-77	Before PRATT,J.- Case called for trial and resumed, trial to cont on 4-5-77				
44 4-5-77	Before PRATT,J.- Case called for trial and resumed, trial to cont on 4-6-77				
45 4-7-77	Before PRATT,J.- Case called for trial and resumed, Defts rests and Govt rests, Defts motion for a directed verdict and a mistrial, motion argued and denied. Trial to cont on 4-8-77				
46 4-8-77	Before PRATT,J.- Case called for trial and resumed, Govt sums up and defts sum up, The Court charges jury and trial to resume on 4-11-77				
47 4-11-77	X Two orders of sustenance filed.				
48 4-11-77	Before PRATT,J.- Case called for trial and resumed, Jury returns with a verdict and finds defts M. Rauch, S. Rauch & L. Corsa guilty on cts 1,2,3,4,5,6,8,9,10, 11,12,13,14 & 15. Count 7 dismissed by the Court. Trial concluded. Jury discharged. Bail limits to cover USA . Sentences adjd without date . Order of sustenance signed.				
49 4-11-77	By PRATT,J.- Order of sustenance filed.				
50 4-11-77	Form of verdict filed.				
51 4-6-77	Before PRATT,J.- Case called for trial and resumed, trial to cont on 4-7-77				

A

4a

Docket Entries--Marc Rauch

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DEL
(Document No.)		
4-12-77	Civil appeal scheduling order filed.	
4-14-77	Stenographer's transcripts dated March 14, 1977 (1 PM), March 15, 1977 (10 AM), March 16, 1977 (9:30 AM), March 17, 1977 (9:15 AM), March 18, 1977 (10 AM), March 21, 1977 (10 AM), March 22, 1977 (10 AM), March 25, 1977 (9:45 AM), March 28, 1977 (10 AM), March 29, 1977 (9:AM), March 30, 1977 (10 AM), March 31, 1977 (9:AM), April 1, 1977 (10 AM), April 5, 1977 (10 AM), April 6, 1977 (9:30 AM), April 7, 1977 (10 AM) & April 8, 1977 (9:05 AM) filed. (17 transcripts)	
4-20-77	Voucher for expert services filed.	
4-25-77	Stenographer's transcript dtd 4-11-77 at 9 AM filed.	
6-20-77	Sten. transcript dtd. 3-8-77 filed.	
6-30-77	Stenographer's transcript dtd 3-1-77 at 4:15 PM filed.	
7-7-77	Before Pratt, J.- case called - Defts Sol Rauch, Marc Rauch, & Lawrence Corsa present with counsels - Deft Marc Rauch sentenced to imprisonment under Title 18, USC, Section 3651 for a period of 3 years on each of cts 1,2,3,4,5,6,8,9,10,11,12,13,14,& 15 - Sentence on each count to run concurrent with each other - deft to serve 6 months in a jail-type institution and to be placed on probation for the remainder of the sentence (2 1/2 years)- deft is also fined \$200.00 on each of cts 1,2,3,4,5,6,8,9,10,11,12,13,14,15 for a total of \$2,800.00 - stay of execution of sentence pending outcome of appeal -76 CR 308 (underlying indictment) is dismissed.	
7-7-77	Judgment and commitment filed. Certified copies to US Atty, US Marshal and Probation.	
7-7-77	Financial affidavit of Marc Rauch filed.	
7-7-77	Notice of appeal filed. Duplicate Notice sent to the Court of Appeals with copy of docket sheets.(MARC RAUCH)	
7-7-77	Judgment and commitment filed.	
8-10-77	Scheduling Order filed that the record be docketed on or before 8-15-77.	



A 4e

DOCKET ENTRIES--LAWRENCE CORSA

U.S. TITLE/SECTION	OFFENSES CHARGED	Case Filed Mo Day	U.S. MAG CASE NO
18:1341 & 2	Deft engaged in the	4 30	76 308
15: 77q(a) & 77x	business of selling rare		
	U.S. Coin Portfolios		

APPEAL
CLOSED

U.S. TITLE/SECTION
18:1341 & 2
15: 77q(a) & 77x

OFFENSES CHARGED
Deft engaged in the
business of selling rare
U.S. Coin Portfolios

EARL - RELEASE	
Denied	AMT ☐ Fugitive
Set	☐ Para. Power
\$ 000	☐ PSA
Date	conditions
☐ Bail Not Made	☐ 10% Deposit
☐ Status Changed (See Docket)	☐ Surety Bond
	☐ Collateral
	☐ 3rd Pny Cust Other

II. KEY DATES & INTERVALS

ARREST or U.S. Custody Began	INDICTMENT ☒ Information ☐ High Risk Date 4-30-76	ARRAIGNMENT 7/21/76	TRIAL Vair Dira
Summons Served	Indict. Waived 3-14-77	1st Plea	Trial Set For 11/29/76
First Appearance	In Charging District 3-8-77	Final Plea	Trial Began 2/23/77
	Superseding ☐ Indict/Info ☒		Trial Ended 4-11-77

SENTENCE
Disposition of Charges
☐ On All Charges
☐ On Lesser Offenses
☐ WOP ☐ JAP

Search Warrant	Issued	DATE	INITIAL/NO.	MAGISTRATE	INITIAL/NO.	OUTCOME
Summons	Issued			INITIAL APPEARANCE DATE		☐ DISMISSED
Arrest Warrant Issued	Return			PRELIMINARY EXAMINATION OR REMOVAL HEARING		☐ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
COMPLAINT	Served			☐ WAIVED ☐ NOT WAIVED		☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW
OFFENSE (In Complaint)				☐ INTERVENING INDICTMENT		

U.S. Attorney or Asst.

ATTORNEYS

Defense ☒ CJA ☒ Rel. ☐ Waived ☐ Self ☐ None / Other ☐ PD ☐ CD

Gary Woodfield
Ron De Petris

Samuel H. Goldman
225 Broadway
New York NY 233-4530

* Show last names and suffix numbers of other defendants on same indictment/information

SOL RAUCH 1; MARC RAUCH 2; MARVIN URBAN 4

DATE	(DOCUMENT NO.)	PROCEEDINGS	EXCLUDABLE DELAY
4-30-76		Before BRAMWELL, J - Indictment filed ordered sealed by the Court.	(a) (b) (c) (d)
7/13/76		Before PRATT, J. - Case called. Defts & Counsel ^{/not} present. Indictment ordered unsealed by the Court.	
7/21/76		Before PRATT, J. - Case called. Defts & Counsel present. Deft arraigned & after being advised of their rights & on their own behalf enters a plea of not guilty - Bail set at \$5,000 P.R. adjd to 8/18/76 at 9:30 a.m. for S/C Bail limits extended to Jamaica as to defts S. Rauch, M. Rauch, & L. Corsa.	
7/21/76		Notice of Appearance filed.	
8-18-76		Before Pratt, J - case called - deft & atty present - adjd to 9-21-76 at 9:30 am for motions & conference	
9-21-76		Before PRATT, J. - Case called. Counsel present. Adj'd to 11-29-76 for trial.	

Docket Entries--Lawrence Corsa

DATE	IV. PROCEEDINGS (continued)	PAGE TWO	V EXCLUSIVE DELAY
(DOCUMENT NO.)			
10-28-76	Notice of Motion and Affidavit for dismissal of the indictment, returnable November 12, 1976 before Judge Gerald Goettel at Southern District. - Filed.		
11-10-76	Govts Memorandum of Law filed in opposition to defts motion to dismiss		
11/17/76	By GOETTEL, J.. - Order to show cause filed ordering that the deft appear before this Court on 11/19/76 at 10:30 a.m. to show cause for why he should not be punished for contempt of Court, pursuant to T-18:401(3), and 42(b).		
11-23-76	Request to examine, inspect and copy papers and records of Federal Coin Reserve etc.		
11/26/76	Affidavit of Samuel H. Goldman filed and forwarded to chambers.		
11/29/76	Before GOETTEL, J.- Case called. Deft present with counsel. Defts motion for adjournment argued - motion granted. Case referred back to Judge Pratt for all purposes.		
1-21-77	Defts Raich's memo of law to dismiss filed.		
2-10-77	Before PRATT, J.- Case called for hearing, hearing ordered and begun, hearing concluded and the decision reserved		
2-15-77	By PRAZTT, J.- Memo and order dtd. 2-14-77 denying defts motion to dismiss and setting 2-24-77 for a pre-trial conf etc., filed.		
2-22-77	Govt's request to charge filed.		
2-23-77	Notice of appeal filed. Duplicate of Notice of Appeal mailed to the C of A with copy of docket entries.		
2-23-77	Before PRATT, J.- Case called for deft URBAN's motion to sever, motion argued and granted. Trial ordered and begun, jury selected and to cont after civil case 71-C-1522		
3-4-77	Notice of motion ret. 3-8-77 with memo of law to dismiss filed.		
3-8-77	SUPERSEDING INFORMATION filed. (S)		
3-9-77	Defendant Sol Rauch's supplemental memo of law filed.		
3-9-77	BY PRATT, J.- order dtd 3-8-77 denying defendants' motion to dismiss the indictment etc. filed on the back of the notice of motion to dismiss filed 3-4-77.		
3-9-77	Copy of scheduling order from the Court of Appeals filed.		
3-8-77	Before Pratt, J.- case called: Deft Sol Rauch present without counsel - deft Mark Rauch present with counsel - deft Lawrence Corsa not present - counsel for Mr. Corsa present. Pre-trial conference held and concluded. Deft Sol Rauch and Marc Rauch sign waivers of indictment. Trial to commence on 3-14-77 at 1PM.		
3-14-77	Sten. transcript dtd. 3-7-77 filed.		
3-14-77	Sten. transcript dtd. 2-10-77 filed.		
3-14-77	Waiver of indictment filed.		
3-14-77	Before PRATT, J.- Case called for trial, Trial resumed. and to cont to 3-15-77		

A 4g
Docket Entries--Lawrence Corsa

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
	(Document No.)				
3-15-77	Before PRATT, J.- Case called for trial and trial resumed/ and trial to cont on 3-16-77				
3-16-77	Before PRATT, J.- Case called for trial and trial resumed, trial to cont on 3-17-77				
3-17-77	Before Pratt, J.- case called - defts and counsel present. Trial resumed. Trial to continue on 3.18.77 at 10 AM.				
3-18-77	Before PRATT, J.- Case called for trial and trial reusmed and trial to cont on 3-21-77				
3-21-77	Financial affidavit filed.				
3-21-77	Before PRATT, J.- Case called for trial and resumed, trial to cont on 3-22-77				
3-22-77	Affidavit of Corsa for a free copy of transcript filed.				
3-23-77	Before Pratt, J.- case called - defts and counsel present - trial to resume on 3/25/77 at 9:30 A.M.				
3-28-77	Affidavit in support of motion directing USA to serve subpoena and pay costs filed.				
3-28-77	Before PRATT, J.- Case called for trial and trial resumed, Trial to cont on 3-28-77				
3-28-77	Before PRATT, J.- Case called for trial and resumed, trial to cont on 3-29-77				
3-29-77	Before PRATT, J.- Case called for trial and resumed, Govt rests, Defts motion to dismiss for mistrial, motion argued and denied. Trial to cont on 3-30-77				
3-30-77	Before PRATT, J.- Case called for trial and resumed. Trial to cont on 3-31-77				
3-31-77	Before PRATT, J.- Case called for trial and resumed, trial to ene en cont on 4-1-77				
4-1-77	Before PRATT, J.- Case called for trial and resumed, trial to cont on 4-5-77				
4-5-77	Before PRATT, J.- Case called for trial and resumed, trial to cont on 4-6-77				
4-11-77	Voucher for expert services filed. original mailed to A.O.				
4-7-77	Before PRATT, J. - Case called for trial and resumed, Defts rest, Govt rests, Defts motion for dismissal for a directed verdict and for a ma mistrial, motion argued and denied. Trial to cont on 4-8-77				
4-8-77	Before PRATT, J.- Case called for trial and resumed, Govt sums up, defts sums up, The court charged jury and trial to resume on 4-11-77				
4-11-77	Two orderes of sustenance filed.				
4-11-77	Before PRATT, J.- Case called for trial and resumed, Jury returns with a verdict and finds defts M. Rauch S. Rauch & L. Corsa guilty on cbs. 1,2,3,4,5,6, 8,9,10,11,12,13,14, & 15. Count 7 dismissed by the Court. Trial concluded. Jury dsicharged. Bail limits to cover continental USA. Sentences adjd w/o date				
4-11-77	By PRATT, J.- Order of sustenance filed.				
4-11-77	Form of verdict filed.				

A 2 h
Docket Entries--Lawrence Corsa

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELA		
		(a)	(b)	(c)
	(Document No.)			
4-6-77	Before PRATT, J.- Case called for trial and resumed, trial to cont on 4-7-77			
4-12-77	Civil appeals schedule order filed			
4-14-77	Stenographer's transcripts dated March 14, 1977 (1PM), March 15, 1977 (10 AM), March 16, 1977 (9:30 AM), March 17, 1977 (9:15 AM), March 18, 1977 (10 AM), March 21, 1977 (10 AM), March 22, 1977 (10 AM), March 25, 1977 (9:45 AM), March 28, 1977 (10 AM), March 29, 1977 (9 AM), March 30, 1977 (10 AM), March 31, 1977 (9 AM), April 1, 1977 (10 AM), April 5, 1977 (10 AM), April 6, 1977 (9:30 AM), April 7, 1977 (10 AM) & April 8, 1977 (9:05 AM) filed. (17 transcripts)			
4-25-77	Stenographer's transcript dtd 4-11-77 at 9 AM filed.			
6-20-77	Sten. transcript dtd. 3-8-77 filed.			
6-30-77	Stenographer's transcript dtd 3-1-77 at 4:15 PM filed.			
7-7-77	Before Pratt, J.- case called - defts Sol Rauch, Marc Rauch & Lawrence Corsa present with counsels. -defendant Lawrence Corsa sentenced to imprisonment under Title 18, USC, Section 3651 for a period of 3 years on each of cts 1,2,3,4,5,6,8,9,10,11,12,13,14,& 15 - sentence on each count to run concurrently with each other-Deft to serve 6 months in a jail-type institution, and to be placed on probation for the remainder of the sentence (2 1/2 years). Defendant is also fined \$200.00 on each of cts 1,2,3,4,5,6,8,9,10,11,12,13,14,& 15 for a total fine of \$2,800. Stay of execution of sentence pending outcome of appeal - 76 CR 308 is dismissed. Judgment and commitment filed. Certified copies to US Atty, US Marshal and Probation.			
7-7-77	Notice of appeal filed. Duplicate Notice of appeal sent to Court of appeals with copy of docket sheets. (LAWRENCE CORSA)			
7-7-77	Judgment and commitment filed			
8-9-77	Voucher for compensation for expert services filed and forwarded for payment.			
8-10-77	Scheduling order filed that the record on appeal be docketed on or before 8-15-77.			
8/12/77	Stipulation from C of A that the appeal of deft from an order of the USDC denying the motion of deft for an order dismissing the indictment on the grounds of prosecutorial misconduct, is withdrawn.jlkj			
8-12-77	Transcript filed dated July 7, 1977			
8-15-77	Record non appeal certified and handed to Joseph P. Hoey for delivery to the court of appeals.			
8-22-77	Acknowledgment filed recvd from the c of a for receipt of record on appeal.			
9-27-77	Transcript filed dated July 7, 1977			
11-18-77	Transcript filed dated 2-23-77			
11-28-77	Stenographer's transcript dtd 7-7-77 filed.			
12-7-77	Supplemental record on appeal certified and mailed to the Court of Appeals. handed to Dennis McMahon for transmittal to the C. of A. sk			

A 4 i
Docket Entries--Lawrence Corsa

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
12-12-77	Acknowledgment received from Court of Appeal for two volumes of the supplemental record on appeal and filed. sk				
12-23-77	Stenographer's transcript dated 9-21-76 filed. sk				

DOCKET ENTRIES--MARVIN URBAN

NO. 07 1
 DATE 07 21
 MARVIN URBAN a/k/a Marfy Gordon (S) 4 3 76 308

U.S. DISTRICT COURT OFFENSES CHARGED ORIGINAL COUNTS 15
 13:1341 & 2 Purported to engage in the
 15:77q(a)&77x business of selling rare U.S.
 Coin Portfolios.

CLOSED

II. KEY DATES & INTERVALS

ARREST or	INDICTMENT	ARRAIGNMENT	TRIAL	SENTENCE
U.S. Custody Begun Summons Served First Appearance	High Risk Date Indict Waived In Charging District Superseding Indict/Info 3-8-77	7/21/76 1st Plea Final Plea	Trial Set For 11/29/76 Voor Dire Trial Began Trial Ended	Disposition of Charges Convicted Acquitted Dismissed On Government's Motion

MAGISTRATE

DATE	INITIAL/NO.	INITIAL APPEARANCE DATE	INITIAL/NO.	OUTCOME
Search Warrant Issued Return Summons Issued Served Arrest Warrant Issued COMPLAINT		PRELIMINARY EXAMINATION OR REMOVAL HEARING WAIVED NOT WAIVED INTERVENING INDICTMENT		DISMISSED HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

U.S. Attorney or Asst. ATTORNEYS Defense J.A. [X] Waived [] Self [] None [] Other [] PD [] CD []

Gary Woodfield Albert J. Brackley
 186 Joralemon Street Ma5-5884

* Show last names and suffix numbers of other defendants on same indictment/information:

SOL RAUCH 1; MARC RAUCH2; LAWRENCE CORSA 3;

DATE	PROCEEDINGS	EXCLUDABLE DELAY (a) (b) (c) (d)
4-30-76	Before BRAMWELL, J - Indictment filed ordered sealed by the Court.	
7/13/76	Before PRATT, J. - Case called. Defts & Counsel not present. Indictment ordered unsealed by the Court.	
7/21/76	BEFORE PRATT, J. - Case called. Defts & Counsel present. Defts arraigned & after being advised of their rights & on their own behalf enters a plea of not guilty - Bail set at \$5,000 P.R. adjd to 8/18/76 at 9:30 a.m. for S/C	
7/21/76	Notice of Appearance filed.	
8-26-76	Notice of Motion filed and Memorandum of Law in support of motion for severance deft Urban for the trial of co-defts; dismissing the Indictment; dismissing counts 11 through 15 etc. (ret. 9-3-76)	
8-18-76	Before Pratt, J - case called - deft & atty present - adjd to 9-21-76 at 9:30 am for motions & conference	
9/3/76	Governments Memorandum of law filed and sent to chambers.	
9-21-76	Before PRATT, J - Case called. Counsel present. Adj'd to 11-29-76 for trial.	

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Docket Entries--Marvin Urban

DATE	IV. PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY	To
	DOCUMENT NO.		(b)	(b)
11/29/76	Before COETTEL, J. - Case called. Deft & Counsel present. Defts motion for adjournment argued - motion granted. Case referred back to Judge Pratt for all purposes.			
1-21-77	Deft's Rauch's memo of law to dismiss filed.			
2-15-77	By PRATT, J.- Memo and order dtd. 2-14-77 denying defts motion to dismiss and setting 2-24-77 for a pre-trial conf etc., filed.			
2-22-77	Govt's request to charge filed.			
2-23-77	Notice of appeal filed. Duplicate of Notice of Appeal mailed to the C of A with copy of docket entries.			
2-23-77	Before PRATT, J.- Case called for deft URBAN's motion to sever, motion granted and argued and granted. Trial ordered and begun and jury selected and to cont after civil case 71-C-1522			
3-4-77	Notice of motion, ref. 3-4-77 with memo of law to dismiss filed.			
3-8-77	SUPERSEDING INFORMATION filed. (S)			
3-9-77	Copy of scheduling order from the Court of Appeals filed.			
3-9-77	Deft Sol Rauch's supplemental memo of law filed.			
3-8-77	Before Pratt, J.- case called: Deft Sol Rauch present without counsel - deft Mark Rauch present with counsel - deft Lawrence Corsa not present - counsel for Mr. Corsa present. Pre-trial conference held and concluded. Deft Sol Rauch and Marc Rauch sign waivers of indictment . Trial to commence on 3/14/77 at 1:00 PM.			
3-14-77	Sten. transcript dtd. 3-7-77 filed.			
3-14-77	Sten. transcript dtd. 2-10-77 filed.			
2-14-77	Before PRATT, J.- Case called for trial. Trial resumed and trial to cont on 3-15-77 fy			
7-7-77	Before PRATT, J.- Case called and on motion of AUSA DePetris the indictment and superceeding information are dismissed			
7-7-77	By PRATT, J.- Order of dismissal filed.			
12-23-77	Stenographer's transcript dated 9-21-76 filed. sk			

A 5
INDICTMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

- against -

SOL RAUCH,
MARC RAUCH,
LAWRENCE CORSA and
MARVIN URBAN, also known as
"Marty Gordon",

Defendants.

----- X

THE GRAND JURY CHARGES:

INTRODUCTION

1. At all times material herein, Federal Coin Reserve, Inc. was a corporation organized and existing under the laws of the State of Delaware with offices at 277 Northern Boulevard, Great Neck, New York, and purported to engage in the business of selling rare U. S. coin portfolios.

2. At all times material herein, the defendant SOL RAUCH was attorney and advisor to the Federal Coin Reserve, Inc.

3. Commencing in approximately December, 1973, and continuing thereafter at all times material herein, the defendant MARC RAUCH was President and co-owner of Federal Coin Reserve, Inc.

4. Commencing in approximately December, 1973, and continuing thereafter at all times material herein, the

I N D I C T M E N T

Cr. No. 76 CR 308
(T. 18, U.S.C., §§1341 and 2;
T. 15, U.S.C., §§77q(a) and
77x)

4-30-76
Pratt



defendant LAWRENCE CORSA was Vice President and co-owner of Federal Coin Reserve, Inc.

5. Commencing in approximately January, 1974, and continuing thereafter at all times material herein, the defendant MARVIN URBAN, also known as "Marty Gordon", was a salesman of Federal Coin Reserve, Inc.

COUNTS ONE THROUGH FIVE

1. Commencing in or about November 1973, and continuing thereafter until at least December 12, 1974, the exact dates being unknown to the grand jury, within the Eastern District of New York and elsewhere, the defendants SOL RAUCH, MARC RAUCH, LAWRENCE CORSA and MARVIN URBAN, also known as "Marty Gordon", did knowingly and willfully devise and intend to devise a scheme and artifice to defraud prospective purchasers of rare U.S. coin portfolios and to obtain money and property from these purchasers by means of false and fraudulent pretenses, representations and promises, well knowing at the time that the pretenses, representations and promises would be and were false and fraudulent when made, which scheme and artifice is set forth hereinafter.

2. It was a part of the scheme and artifice that advertisements, offering for sale rare U.S. coin portfolios, would be and were placed in various newspapers and periodicals throughout the United States, and various television networks to attract potential purchasers.

3. It was a further part of the scheme and artifice that when potential purchasers responded to this approach, and in some instances even when they did not, brochures entitled "The Coin Market and Capital Growth", and other promotional materials describing the rare U.S. coin market and describing Federal Coin Reserve, Inc. would be and were mailed to the potential purchasers. P

4. It was a further part of the scheme and artifice that a short time after the brochures and other materials had been mailed, the potential customers would be and were telephoned, and specific offers to sell them rare U.S. coins would be and were made to them.

5. It was a further part of the scheme and artifice that during the telephone conversations with the potential customers, and in promotional materials mailed to them, among others the following false and fraudulent pretenses, representations, and promises would be and were made, the defendants SOL RAUCH, MARC RAUCH, LAWRENCE CORSA and MARVIN URBAN, also known as "Marty Gordon", well knowing that these pretenses, representations, and promises would be and were false and fraudulent when made:

a) That Federal Coin Reserve, Inc. was a large, established company, which had been in business for many years;

75 17 b) That Federal Coin Reserve, Inc., because of its large size, reserve funds available and an inventory of coins, could sell coins at prices lower than other companies;

c) That Federal Coin Reserve, Inc. would repurchase customers' coins for at least the price paid;

d) That coins purchased from Federal Coin Reserve, Inc. were priced at their current market value;

e) That customers would be individually assigned an Investment-Numismatist Account Executive who was a member of the American Numismatic Association;

f) That coin portfolios were assembled by Federal Coin Reserve, Inc.'s numismatic experts and were guaranteed as to their authenticity and grade;

g) That Federal Coin Reserve, Inc. was provided investment expertise and coin portfolio selection expertise by "The Hartford Investment Group", investment consultant experts;

h) That customers would receive their coins within four to six weeks from the date of purchase;

i) That Federal Coin Reserve, Inc. would provide its customers with semi-annual accounting statements of their investments.

6. It was a further part of the scheme and artifice that after the potential purchasers had been induced by the defendants' false and fraudulent pretenses, representations, and promises to order a certain amount of rare U.S. coins, letters and receipt confirmations would be and were sent to them requesting that payment be forwarded to "The Federal Coin Reserve, 277 Northern Boulevard, Great Neck, New York, U.S.A. 11021."

7. It was further part of the scheme and artifice

A 9
Indictment

that after monies were received from customers for the purchase of coins, delays would occur in the mailing of coins to the customers, and in many cases customers would never be provided with coins, and the defendants would avoid further contact with these customers.

8. On or about the dates hereinafter set forth, within the Eastern District of New York, for the purpose of executing the scheme and artifice and attempting to do so, the defendants SOL RAUCH, MARC RAUCH, LAWRENCE CORSA and MARVIN URBAN, also known as "Marty Gordon", caused to be placed in post offices and authorized depositories for mail matter in Great Neck, New York, various envelopes containing promotional materials, coins and other information to be sent and delivered by the United States Postal Service as hereinafter set forth:

<u>COUNT</u>	<u>DATE OF MAILING</u>	<u>ADDRESSEE</u>
One	March 18, 1974	Dr. Joseph Aquilina 3406 Davenport St. Saginaw, Michigan
Two	August 15, 1974	Dr. Robert E. Fisher 4100 North Harlem Avenue Chicago, Illinois
Three	September 4, 1974	Nancy Spector P.O. Box 2104 Brooklyn, New York
Four	September 27, 1974	Dr. Richard A. Kozal 26 wildwood Trail Palos Park, Illinois
Five	December 10, 1974	Dr. Efthimios Spyropoulos 535 East 86th Street New York, New York

(Title 18, United States Code, Sections 1341 and 2).

COUNTS SIX THROUGH TEN

1. The Grand Jury incorporates by reference and realleges herein all of the allegations contained in paragraphs 1 through 7 of Counts One through Five of this indictment.

2. On or about the dates hereinafter set forth, within the Eastern District of New York, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, the defendants SOL RAUCH, MARC RAUCH, LAWRENCE CORSA and MARVIN URBAN, also known as "Marty Gordon", did take and receive and cause to be taken and received from the United States mails various envelopes containing monies which had been delivered by the United States Postal Service addressed to the Federal Coin Reserve, 277 Northern Boulevard, Great Neck, New York from customers as hereinafter set forth:

<u>COUNT</u>	<u>DATE</u>	<u>SENDER</u>	<u>AMOUNT</u>
Six	June 24, 1974	Dr. Stanley Darcinski 44 Roosevelt Circle Palo Alto, California	\$100
Seven	June 28, 1974	Dr. William Walters 3714 Franklin Street Michigan City, Indiana	\$3,100
Eight	August 22, 1974	Richard S. Myers 308 North Wilshire Lane Arlington Heights, Illinois	\$600
Nine	September 3, 1974	Barbara Wisniewski 1490 Francisco St. San Francisco, California	\$3,870 ^{From N.Y.}
Ten	September 30, 1974	Dr. Boone Brackett 1145 West Gate Oak Park, Illinois	\$4,000

(Title 18, United States Code, Sections 1341 and 2).

COUNTS ELEVEN THROUGH FIFTEEN

1. Commencing in or about November, 1973, and continuing thereafter until at least December 12, 1974, within the Eastern District of New York and elsewhere, the defendants SOL RAUCH, MARC RAUCH, LAWRENCE CORSA and MARVIN URBAN, also known as "Marty Gordon", knowingly and wilfully, in the offer and sale of securities, to wit, investment contracts in rare coin portfolios, by the use of means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly, (a) did employ a device, scheme, and artifice to defraud prospective purchasers of these securities; (b) did obtain money and property from these purchasers by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) did engage in transactions, practices and courses of business which would operate and did operate as a fraud and deceit upon the purchasers of said securities.

2. The allegations contained in paragraphs 2 through 7 of Counts One through Five of this indictment are repeated and realleged as though fully set forth herein, as constituting some of the means by which the violations set forth in paragraph 1 were committed.

3. On or about the dates hereinafter set forth, within the Eastern District of New York, the defendants SOL

A 12
Indictment

RAUCH, MARC RAUCH, LAWRENCE CORSA and MARVIN URBAN, also known as "Marty Gordon", for the purpose of furthering the above-stated violations, did cause to be placed in authorized depositories for mail matter envelopes addressed to the Federal Coin Reserve, Inc., 277 Northern Boulevard, Great Neck, New York, containing monies for the purchase of investment interests in rare U. S. coin portfolios, which were sent and delivered by the United States Postal Service to the Federal Coin Reserve, Inc. as hereinafter set forth:

<u>COUNT</u>	<u>DATE</u>	<u>PURCHASER</u>	<u>AMOUNT</u>
Eleven	August 19, 1974	Dr. Charles Taborsky 20 South Park Street Madison, Wisconsin	\$3,300
Twelve	September 5, 1974	Angelo Pieroni Bellmore, New York	\$5,000
Thirteen	October 30, 1974	Dr. Ekkehard Kemmann Brooklyn, New York	\$500
Fourteen	November 4, 1974	Dr. Robert R. Abbe Great Lakes, Illinois	\$2,000
Fifteen	November 11, 1974	Dr. Seymour Novak Bronx, New York	\$3,300

(Title 15, United States Code, Sections 77q(a) and 77x;
Title 18, United States Code, Section 2).

A TRUE BILL

FOREMAN

DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

SUPERSEDING INFORMATION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA

- against -

SOL RAUCH,
MARC RAUCH,
LAWRENCE CORSA and
MARVIN URBAN, also known as
"Marty Gordon",

Defendants.

- - - - - X

THE UNITED STATES ATTORNEY CHARGES:

INTRODUCTION

1. At all times material herein, Federal Coin Reserve, Inc. was a corporation organized and existing under the laws of the State of Delaware with offices 277 Northern Boulevard, Great Neck, New York, and purported to engage in the business of selling rare U.S. coin portfolios.

2. At all times material herein, the defendant SOL RAUCH was attorney and advisor to the Federal Reserve, Inc.

3. Commencing in approximately December, 1973, and continuing thereafter at all times material herein, the defendant MARC RAUCH was President and co-owner of Federal Coin Reserve, Inc.

4. Commencing in approximately December, 1973, and continuing thereafter at all times material herein,

SUPERSEDING INFORMATION

Cr. No. 76 CR 308(S)
(T. 18, U.S.C. §1341
and 2)

the defendant LAWRENCE CORSA was Vice-President and co-owner of Federal Coin Reserve, Inc.

5. Commencing in approximately January, 1974, and continuing thereafter at all times material herein, the defendant MARVIN URBAN, also known as "Marty Gordon", was a salesman of Federal Coin Reserve, Inc.

COUNTS ONE THROUGH FIVE

1. Commencing in or about November 1973, and continuing thereafter until at least December 12, 1974, the exact dates being unknown to the grand jury, within the Eastern District of New York and elsewhere, the defendants SOL RAUCH, MARC RAUCH, LAWRENCE CORSA and MARVIN URBAN, also known as "Marty Gordon", did knowingly and wilfully devise and intend to devise a scheme and artifice to defraud prospective purchasers of rare U.S. coin portfolios and to obtain money and property from these purchasers by means of false and fraudulent pretenses, representations and promises, well knowing at the time that the pretenses, representations and promises would be and were false and fraudulent when made, which scheme and artifice is set forth hereinafter.

2. It was a part of the scheme and artifice that advertisements, offering for sale rare U.S. coin portfolios, would be and were placed in various newspapers and periodicals throughout the United States, and

various television networks to attract potential purchasers.

3. It was a further part of the scheme and artifice that when potential purchasers responded to this approach, and in some instances even when they did not, brochures entitled "The Coin Market and Capital Growth", and other promotional materials describing the rare U.S. coin market and describing Federal Coin Reserve, Inc. would be and were mailed to the potential purchasers.

4. It was a further part of the scheme and artifice that a short time after the brochures and other materials had been mailed, the potential customers would be and were telephoned, and specific offers to sell them rare U.S. coins would be and were made to them.

5. It was a further part of the scheme and artifice that during the telephone conversations with the potential customers, and in promotional materials mailed to them, among others the following false and fraudulent pretenses, representations, and promises would be and were made, the defendants SOL RAUCH, MARC RAUCH, LAWRENCE CORSA and MARVIN URBAN, also known as "Marty Gordon", well knowing that these pretenses, representations, and promises would be and were false and fraudulent when made:

a) That Federal Coin Reserve, Inc. was a

large, established company, which had been in business for many years;

b) That Federal Coin Reserve, Inc., because of its large size, reserve funds available and an inventory of coins, could sell coins at prices lower than other companies;

c) That Federal Coin Reserve, Inc. would repurchase customers' coins for at least the price paid;

d) That coins purchased from Federal Coin Reserve, Inc. were priced at their current market value;

e) That customers would be individually assigned an Investment-Numismatist Account Executive who was a member of the American Numismatic Association;

f) That coin portfolios were assembled by Federal Coin Reserve, Inc.'s numismatic experts and were guaranteed as to their authenticity and grade;

g) That Federal Coin Reserve, Inc. was provided investment expertise and coin portfolio selection expertise by "The Hartford Investment Group", investment consultant experts;

h) That customers would receive their coins within four to six weeks from the date of purchase;

i) That Federal Coin Reserve, Inc. would provide its customers with semi-annual accounting statements of their investments.

6. It was a further part of the scheme and

artifice that after the potential purchasers had been induced by the defendants' false and fraudulent pretenses, representations, and promises to order a certain amount of rare U.S. coins, letters and receipt confirmations would be and were sent to them requesting that payment be forwarded to "The Federal Coin Reserve, 277 Northern Boulevard, Great Neck, New York, U.S.A. 11021."

7. It was further part of the scheme and artifice that after monies were received from customers for the purchase of coins, delays would occur in the mailing of coins to the customers, and in many cases customers would never be provided with coins, and the defendants would avoid further contact with these customers.

8. On or about the dates hereinafter set forth, within the Eastern District of New York, for the purpose of executing the scheme and artifice and attempting to do so, the defendants SOL RAUCH, MARC RAUCH, LAWRENCE CORSA and MARVIN URBAN, also known as "Marty Gordon", caused to be placed in post offices and authorized depositories for mail matter in Great Neck, New York, various envelopes containing promotional materials, coins and other information to be sent and delivered by the United States Postal Service as hereinafter set forth:

A 18
Superseding Information

<u>COUNT</u>	<u>DATE OF MAILING</u>	<u>ADDRESSEE</u>
One	March 18, 1974	Dr. Joseph Aquilina 3406 Davenport Street Saginaw, Michigan
Two	August 15, 1974	Dr. Robert E. Fisher 4100 North Harlem Avenue Chicago, Illinois
Three	September 4, 1974	Nancy Spector P.O. Box 2104 Brooklyn, New York
Four	September 27, 1974	Dr. Richard A. Kozal 26 Wildwood Trail Palos Park, Illinois
Five	December 10, 1974	Dr. Efthimios Spyropoulos 535 East 86th Street New York, New York

(Title 18, United States Code, Sections 1341 and 2).

COUNT SIX THROUGH FIFTEEN

1. The Grand Jury incorporates by reference and realleges herein all of the allegations contained in paragraphs 1 through 7 of Counts One through Five of this superseding information.

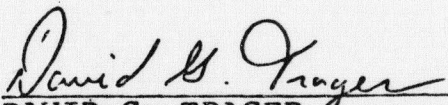
2. On or about the dates hereinafter set forth, within the Eastern District of New York, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, the defendants SOL RAUCH, MARC RAUCH, LAWRENCE CORSA and MARVIN URBAN, also known as "Marty Gordon", did take and receive and cause to be taken and received from the United States mails various envelopes

A 19
Superseding Information

containing monies which had been delivered by the United States Postal Service addressed to the Federal Coin Reserve, 277 Northern Boulevard, Great Neck, New York from customers as hereinafter set forth:

<u>COUNT</u>	<u>DATE</u>	<u>SENDER</u>	<u>AMOUNT</u>
Six	June 24, 1974	Dr. Stanley Deresinski 44 Roosevelt Circle Palo Alto, California	\$100
Seven	June 28, 1974	Dr. William Walters 3714 Franklin Street Michigan City, Indiana	\$3,100
Eight	August 22, 1974	Richard S. Myers 308 North Wilshire Lane Arlington Heights, Illinois	\$600
Nine	September 3, 1974	Barbara Wisniewski 1490 Francisco Street San Francisco, California	\$3,870
Ten	September 30, 1974	Dr. Boone Brackett 1145 West Gate Oak Park, Illinois	\$4,000
Eleven	August 19, 1974	Dr. Charles Taborsky 20 South Park Street Madison, Wisconsin	\$3,300
Twelve	September 5, 1974	Angelo Pieroni Bellmore, New York	\$5,000
Thirteen	October 30, 1974	Dr. Ekkehard Kemmann Brooklyn, New York	\$500
Fourteen	November 4, 1974	Dr. Robert R. Abbe Great Lakes, Illinois	\$2,000
Fifteen	November 11, 1974	Dr. Seymour Novak Bronx, New York	\$3,300

(Title 18, United States Code, Sections 1341 and 2).



DAVID G. TRAGER
United States Attorney
Eastern District of New York

MEMORANDUM AND ORDER FEBRUARY 14, 1977

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

FEB 15 1977 - ☆

UNITED STATES DISTRICT COURT TIME A.M.
EASTERN DISTRICT OF NEW YORK P.M.

----- x
UNITED STATES OF AMERICA,

DOCKET NO. 76 CR 308

- against -

SOL RAUCH, MARC RAUCH, LAWRENCE
CORSA, and MARVIN URBAN, a/k/a
"MARTY GORDON",

MEMORANDUM AND ORDER

Defendants.

----- x

PRATT, J:

A hearing on the motion of defendant Marc Rauch to dismiss the indictment on grounds of prosecutorial misconduct was held on February 10, 1977. Defendants claim that the Assistant United States Attorney (AUSA) who had conducted the grand jury proceedings leading to this indictment failed to keep a promise to have defendant Marc Rauch testify a second time before the grand jury, that the AUSA tricked both Marc Rauch and the other defendants into testifying on the understanding that Marc Rauch would be recalled, that as a result the testimony of Marc Rauch before the grand jury was involuntary, and that the actions by the AUSA constituted prosecutorial misconduct requiring dismissal of the indictment under the principles enunciated in United States v. Handler, 383 F Supp 1267 (D Md 1974);

Memorandum and Order February 14, 1977

United States v. DeMarco, 407 F Supp 107 (CD Cal 1975); United States v. Crow Dog, 399 F Supp 228 (ND Iowa 1975), aff'd, 532 F2d 1182 (CA8 1976); and United States v. Banks, 383 F Supp 389 (D SD 1974), appeal dismissed, 513 F2d 1329 (CA8 1975).

The AUSA has denied ever having promised to recall Marc Rauch before the grand jury, and the Government demurs to the motion, arguing that even if defendants' version were true, Marc Rauch's testimony was not involuntary and that the facts claimed would not amount to misconduct which requires dismissal of the indictment.

The main factual conflict presented by the testimony at the hearing was whether the AUSA had promised that Marc Rauch would be given a second opportunity to testify before the grand jury. Five witnesses testified to such promises in remarkably similar detail and language. The AUSA flatly denied the statements attributed to him by defendants' witnesses. Although I have some doubts about the credibility of defendants' witnesses on this point, I find it unnecessary to determine whether the AUSA made the promises or not, for even if he had promised to recall Marc Rauch before the grand jury as described by defendants'

witnesses, that conduct would not warrant the granting of relief to defendants.

Based on the record presented, I find and conclude that the testimony by Marc Rauch before the grand jury on February 29, 1976 was voluntary. He had previously indicated through his father that he would testify voluntarily. He was informed that he was a target of the grand jury's investigation, and his answers to the prosecution's questions cover some 100 pages of the grand jury transcript, all of them without protest except as to his being unprepared, and without reference to his present claim, namely that he was testifying only on condition that he would be permitted to come back again. While it may well be that Marc Rauch assumed and expected that he would be recalled, the actual testimony given by him was at the time it was given unquestionably voluntary.

Nor do the circumstances here, even assuming the truth of defendants' witnesses, amount to prosecutorial misconduct which would require dismissal of the indictment under the principles of the cases cited by defendants. Defendants' argument rests upon the claim that Marc Rauch was not granted a promised opportunity to voluntarily testify on a

later date at great length in connection with voluminous documents. But in a grand jury proceeding, it is not the target who determines the scope of the inquiry, it is the grand jury itself, assisted by the prosecutor. Apparently, the grand jury determined, without Marc Rauch's supplementing testimony, that it had probable cause for the charges in its indictment. Whether Marc Rauch's detailed explanation of the facts and circumstances relating to those charges will exonerate the defendants is a question to be resolved ultimately at trial. The AUSA's failure to recall Marc Rauch before the grand jury did not amount to prosecutorial misconduct requiring dismissal of the indictment.

Accordingly, defendants' motion is in all respects denied.

During the hearing, counsel for defendants indicated that their side of the trial would take approximately three weeks. This was about three times the amount of time originally estimated when the case earlier approached trial, but was deferred because of the illness of one of the defendants. In view of the large number of witnesses and documents apparently to be presented by both sides, the attorneys for all parties are directed to attend a pretrial

conference before me at 3:30 P.M. on February 24, 1977, for the purpose of working out means for shortening this trial. Two days prior to that conference all attorneys shall submit to me and to opposing counsel the following:

1. A list of all exhibits proposed to be presented at the trial, numbered or lettered appropriately for marking into evidence.

2. A list of all witnesses proposed to be called.

3. A summary of the proposed direct testimony of each witness other than the individual defendants themselves.

At the pretrial conference, each counsel shall inform me of:

1. The exhibits to which objection shall be made by him, and the ground of the objection.

2. Any witnesses to whose testimony objection shall be made by him, and the ground of the objection.

3. All facts and testimony to which he is willing to stipulate for purposes of the trial.

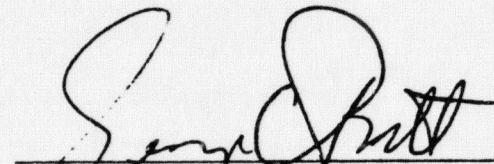
All parties are reminded of the severe demands on the court's trial time presently being made by both civil and criminal cases. Their cooperation in minimizing the

Memorandum and Order February 14, 1977

time required in this trial is essential to the overall administration of justice. I urge the utmost effort by all counsel to assist the court in achieving here a prompt, just determination of the issues of this case, consistent with the rights of all parties.

SO ORDERED.

Dated: Westbury, New York
February 14, 1977



GEORGE C. PRATT
U. S. DISTRICT JUDGE

A 26

MEMO ENDORSED DENYING MOTION, MARCH 8, 1977

Index No. 87 02 303

Year 19

U.S. DIST. COURT S.D.N.Y.

12 MAR 9 1977

12 4 10 45

EAST DIST.

UNITED STATES OF AMERICA

TIME A.M.

P.M.

-against-

SOL RAUCH, MARC RAUCH, &
LAWRENCE CORSA

Defendants

denied
3/8/77
Henry J. Smith
USDP

John
Garcia

NOTICE OF MOTION
AND
AFFIDAVIT

Attorney for SOL R. RAUCH, PRO SE

Office and Post Office Address, Telephone

17-85 215 STREET
BAYSIDE, NEW YORK
(212) 423-5054

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated

Attorney(s) for

A 27
CHARGE OF THE COURT

3627

(Jury enters box.)

THE COURT: Members of the jury, we are now at the stage of the trial where you are about to undertake your final function as jurors. Your duty is a serious and important one. In performing it you actively share with me the responsibility of administering justice according to law and the evidence in this case.

Your oath obliges you to discharge this final task with an attitude of impartiality and as was emphasized by me when you were selected as jurors, without bias or prejudice, for or against the Government or the defendants as parties to this controversy.

You must not let yourselves be governed by sympathy or any other consideration which is not founded in the evidence and these instructions on the law.

This case is important to the Government, since the enforcement of the criminal laws is of primary importance to the welfare of the community. Obviously, it is equally important to the defendants who are charged with serious crimes and have these Constitutional right to receive a fundamentally fair trial.

(Continued on next page)

Charge of the Court

THE COURT: (Continuing) The community has an interest in that too. The fact that the Government is a party entitles it to no greater consideration than that accorded to any other party in litigation.

By the same token, it's entitled to no less consideration. All parties, the Government and individuals alike, stand as equals before the Bar of Justice.

In these instructions I shall describe for you, first, the general principles applicable to all criminal trials, then the nature of the charges in this case, next the specific rules of law which are applicable to those charges, and finally, something about how you should reach a verdict.

First, as to the general principles applicable to all criminal trials:

To begin with, keep in mind that I have no view whatsoever of the guilt or innocence of these defendants. Your final role in this case is to decide and pass upon the fact issues in the case. You are the sole and exclusive judges of the facts. You determine the weight of the evidence. You appraise the credibility of the witnesses. You draw

the reasonable inferences from the evidence. You finally determine the guilt or innocence of these defendants.

My function now is to instruct you as to the law and it is your duty to accept these instructions as to the law and to apply them to the facts as you may find them. With respect to any fact matter, it is your recollection and yours alone that governs. Anything that counsel, either for the Government or the defense, may have said with respect to matters in evidence, whether during the trial, in a question, in argument, or in summation, is not to be substituted for your own recollection of the evidence.

So, too, as to any matter in evidence, anything that I may have said during the trial or may refer to in the course of these instructions is not to be taken in place of your own recollection.

The information in this case is merely an accusation, a charge. It is not evidence of the defendants' guilt. Since the defendants have pleaded not guilty, the Government has the burden of proving the charges against the defendants beyond a reasonable doubt. A defendant does not

have to prove his innocence. On the contrary, each defendant is presumed to be innocent of the accusations contained in the information.

This presumption of innocence was in their favor throughout the entire trial. It continues in his favor -- in their favor even as I instruct you now and it remains in their favor during the course of your deliberations in the jury room. The presumption of innocence is removed as to a defendant only if and when you are satisfied that the Government has sustained its burden of proving the defendants guilty beyond a reasonable doubt. If the Government has failed to sustain its burden as to a defendant, then the presumption of innocence alone is sufficient to acquit him.

I have used the term "reasonable doubt". What is a reasonable doubt? The words almost define themselves; that there is a doubt founded in reason and arising out of the evidence in the case or the lack of evidence. It is a doubt which a reasonable person has after carefully weighing all the evidence. Reasonable doubt is a doubt which appeals to your reason, to your judgment, to your common sense and your experience.

Charge of the Court

It is not caprice, whim, speculation, conjecture or suspicion. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for a defendant.

If, after a fair and impartial consideration of all the evidence, you can candidly and honestly say you are not satisfied of the guilt of a defendant; that you do not have an abiding conviction of his guilt; in sum, if you would have such a doubt as would cause you as prudent persons to hesitate before acting in matters important to yourselves, then you have a reasonable doubt. In that circumstance, it is your duty to acquit.

On the other hand, if after such an impartial and fair consideration of all the evidence, you can candidly and honestly say you do have an abiding conviction of the defendants' guilt -- of a defendant's guilt -- such a conviction as you would be willing to act in important and weighty matters in the personal affairs of your own life, then you have no reasonable doubt and under such circumstances, it is your duty to convict.

Reasonable doubt does not mean a positive certainty or beyond all possible doubt. If that

Charge of the Court

were the rule, few persons, however guilty they might be, would be convicted. Since it's practically impossible for a person to be absolutely and completely convinced of any controverted fact, the law in a criminal case is that it is sufficient if the guilt of a defendant is established beyond a reasonable doubt, not beyond all possible doubt.

Now is it the Government's burden to prove each and every bit of evidence to be true beyond a reasonable doubt. Its burden is to prove beyond a reasonable doubt each and every essential element of the crime charged. I will say more about the essential elements of these crimes in a moment.

Reasonable doubt may arise from the failure of the Government to produce evidence. A defendant is not obligated to present evidence in his favor. He has the right to rely on the failure of the Government to prove its case. He may also rely on evidence brought out on cross-examination of witnesses called by the Government.

On the other hand, a defendant has the power to subpoena anyone in support of his position if he chooses, and he may exercise that power if he chooses.

Charge of the Court

What is the evidence in the case which you may consider?

It consists of sworn testimony of witnesses, regardless of who may have called them. It consists of the exhibits which have been received in evidence, regardless of who may have produced them, and it consists of any facts which may have been admitted or stipulated. With respect to those, they have been brought to your attention at the time that it has occurred.

What is not evidence?

One, statements or arguments of counsel in opening, summation or made during the trial. They are not evidence.

Two, any statements I may make, they're not evidence.

Three, any evidence which I may have directed be stricken from the record, told you to disregard it, that is not evidence.

Four, any questions to which an objection has been sustained, the questions themselves are not evidence and you must not speculate on what the answer might have been had I permitted the answer to be given.

Charge of the Court

Five, questions which ask the witness "Do you know" or "Are you aware that X is true" when the witness responded "No." You must not draw any inference concerning fact X from the mere asking of such a question.

In that connection, you may well recall a series of questions by Mr. Woodfield put to Mr. Marc Rauch on cross-examination where he asked Mr. Rauch if he was aware that certain people who Mr. Woodfield named had not received their coins. Mr. Rauch said he was not aware of that. Subsequently, the Government presented two rebuttal witnesses, Dr. Calderone and Mr. Walter who testified that they had not received coins.

With respect to the other names which Mr. Woodfield inquired about, however, you should disregard them altogether since no evidence has been presented that those individuals did not receive coins and you must decide the case only on the basis of the evidence which is before you.

I have used the term "inference." An inference is a conclusion which reason and common sense lead you to draw from the facts which have been established by the evidence in the case. Also, it is

Charge of the Court

for you, the jury, to draw whatever inferences may be called for by the evidence.

Evidence may be either direct or circumstantial. Direct evidence is that which is given of actual or personal knowledge of the fact in question. One who with his own eyes sees a man fire a gun at another man and then tells what he saw has given direct evidence of the shooting. In the absence of direct evidence, however, reliance is often placed upon circumstantial evidence which does not tend to establish the fact in question directly, but rather does so indirectly by establishing surrounding circumstances from which the fact in question can be inferred; thus if our witness to the shooting had not actually been there to see it, but after hearing a shot arrived moments later and saw one man holding a smoking gun and another lying on the ground, his testimony would tend to prove the shooting, but it would be indirect or circumstantial evidence since it would be evidence of surrounding or collateral facts from which the fact in question, the shooting, might be inferred.

As a general rule, the law makes no distinction between direct and circumstantial

Charge of the Court

evidence, but simply requires that before convicting a defendant, the jury be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case.

From time to time in the course of the trial, objections were made and rulings on evidence given. You should draw no inferences from the comparative frequency of objections of one or the other side or from the comparative records in having objections sustained. Where an objection to a question was sustained, you must, of course, disregard the question and draw no inferences from its wording about the answer that might have been given. Where an objection was overruled, the evidence then received has no special weight just because it was unsuccessfully objected to.

We turn now to the charges made in the information against the defendants. At the outset I want to reemphasize the information merely states the charges and it has no weight as evidence, none at all.

The defendants are charged with crimes generally called mail fraud. When you retire to deliberate, I will give you a copy of the information

Charge of the Court

which sets forth the details of the charges. Right now, I want to discuss those charges with you and direct your attention to certain matters which you must consider:

To begin with, you will see that the information refers to four defendants, Sol Rauch, Marc Rauch, Lawrence Corsa and Marvin Urban, also known as Marty Gordon.

Before this trial began, I ordered that the case against Mr. Urban be tried separately from that of the other three defendants. So that although the information refers to Mr. Urban, he is not on trial here before you and you are not to give any weight to the fact that his trial has been severed from this one.

In addition, you will recall we began with fifteen counts of the information, one for each of fifteen customers to whom matter was mailed or from whom mail was received. At the end of the Government's case, I dismissed on legal grounds the seventh count pertaining to a Dr. William Walter and you are not to give any weight to the fact that his name was a part of the information.

Now, the information itself reads as follows:

Charge of the Court

"At all times material herein, Federal Coin Reserve, Inc. was a corporation organized and existing under the laws of the State of Delaware with offices at 277 Northern Boulevard, Great Neck, New York and purported to engage in the business of selling rare, U.S. Coin portfolios."

That was paragraph 1.

"2. At all times material herein, the defendant Sol Rauch was attorney and advisor to the Federal Reserve, Inc.

"3. Commencing in approximately December 1973, and continuing thereafter at all times material herein, the defendant Marc Rauch was president and co-owner of Federal Coin Reserve, Inc.

"4. Commencing in approximately December 1973, and continuing thereafter at all times material herein, the defendant Lawrence Corsa was vice-president and co-owner of Federal Coin Reserve, Inc.

"5. Commencing in approximately January 1974, and continuing thereafter at all times material herein, the defendant Marvin Urban, also known as Marty Gordon, was a salesman of Federal Coin Reserve, Inc."

That's under a section entitled "Introduction."

Then under a section entitled "Counts 1 through 5," it reads:

"1. Commencing in or about November 1973, and continuing thereafter, until at least December 12, 1974, the fexact dates being unknown, within the Eastern District of New York and elsewhere, the defendants Sol Rauch, Marc Rauch, Lawrence Corsa" and also refers to Mr. Urban, "did knowingly and willfully devise and intend to devise a scheme and artifice to defraud prospective purchasers of rare U.S. Coin portfolios and to obtain money and property from these purchasers by means of false and fraudulent pretenses, representations and promises, well knowing at the time that the pretenses, representations and promises would be and were false and fraudulent when made, which scheme and artifice is set forth hereinafter.

"2. It was a part of the scheme and artifice that advertisements offering for sale U.S. coin portfolios would be and were placed in various newspapers and periodicals throughout the United States and various television networks to attract potential purchasers.

"3. It was a further part of the scheme and

Charge of the Court

artifice that when potential purchasers responded to this approach, and in some instances even when they did not, brochures entitled 'The Coin Market and Capital Growth' and other promotional materials describing the rare U.S. coin market and describing Federal Coin Reserve, Inc. would be and were mailed to the potential purchasers.

"4. It was a further part of the scheme and artifice that a short time after the brochures and other materials had been mailed, the potential customers would be and were telephoned and specific offers to sell them rare U.S. coins would be and were made to them.

"5. It was further a part of the scheme and artifice during the telephone conversations with the potential customers and in promotional materials mailed to them, among others, the following false and fraudulent pretenses, representations and promises would be and were made, the defendants well knowing that these pretenses, representations and promises would be and were false and fraudulent when made" and then there follows a series of the alleged representations. They are lettered, "A. That Federal Coin Reserve, Inc. was a large, established

company which had been in business for many years;

"B. That Federal Coin Reserve, Inc., because of its large size, reserve funds available and an inventory of coins, could sell coins at prices lower than other companies;

"C. That Federal Coin Reserve, Inc. would repurchase coins for at least the price paid;

"D. That coins purchased from Federal Coin Reserve, Inc. were priced at their current market value;

"E. That customers would be individually assigned an Investment-Numismatist Account Executive who was a member of the American Numismatic Association;

"F. That coin portfolios were assembled by Federal Coin Reserve, Inc.'s numismatic experts and were guaranteed as to their authenticity and grade.

"G. Federal Coin Reserve, Inc. was provided investment expertise and coin portfolio selection expertise by 'The Hartford Investment Group', investment consultant experts;

"H. That customers would receive their coins within four to six weeks from the date of purchase;

"I. That Federal Coin Reserve, Inc. would

Charge of the Court

provide its customers with semi-annual accounting statements of their investments.

"6. It was a further part of the scheme and artifice that after the potential purchasers had been induced by the defendants' false and fraudulent pretenses, representations and promises, to order a certain amount of rare U.S. coins, letters and receipt confirmations would be and were sent to them requesting that payment be forwarded to 'The Federal Coin Reserve, 1277 Northern Boulevard, Great Neck, New York, U.S.A. 11021.

"7. It was further part of the scheme and artifice that after moneys were received from customers for the purchase of coins, delays would occur in the mailing of coins to the customers, and in many cases customers would never be provided with coins, and the defendants would avoid further contact with these customers.

"8. On or about the dates hereinafter set forth, within the Eastern District of New York, for the purpose of executing the scheme and artifice and attempting to do so, the defendants caused to be placed in post offices and authorized depositories for mail matter in Great Neck, New York, various

envelopes containing promotional materials, coins and other information to be sent and delivered by the United States Postal Service as hereinafter set forth."

Then there follows a list of counts 1 through 5 of the information and it is set up in three columns as you will see. One is the count number, the second one is the date of mailing, referred to, and third is the addressee which gives the name and address of the individuals referred to there, and they are Dr. Joseph Aquilina, Dr. Robert E. Fisher, Nancy Spector, Dr. Richard A. Kozal, Dr. Efthimios Spyropoulos. All of that is alleged to be in violation of Title 18, United States Code Sections 1341 and 2.

Then under a section entitled Count 6 through 15, the information continues:

"1. The Grand Jury incorporates" -- in this case the United States Attorney -- "incorporates by reference and realleges herein all the allegations contained in paragraphs 1 through 7 of Counts 1 through 5 of this superseding information."

That is, everything up to the list of the addressees and the dates of mailing I read to you is

incorporated as part of Counts 6 through 15.

Then it repeats the same allegation with respect to having placed things in the mail, taking things from the mail, and it sets forth the additional counts I have had deleted from the copy which will be given to you, Count 7 which I told you about, Dr. William Walters, not to be confused with Mr. Walter who testified here yesterday.

Count 6 refers to Dr. Stanley Deresinski. Count 8, Richard S. Myers. Count 9, Barbara Wisniewski. Count 10, Dr. Boone Brackett. Count 11, Dr. Charles Taborsky. Count 12, Angelo Pieroni. Count 13, Dr. Ekkehard Kemmann. Count 14, Dr. Robert R. Abbe, and Count 15, Dr. Seymour Novak.

Again, it is alleged to be in violation of Section 2 and Section 1341 of Title 18, United States Code.

So much for the information. This information charges violations of two statutes that I referred to, Section 1341 and Section 2, both of Title 18 of the United States Code.

Section 1341, the mail fraud statute, states in relevant part, "Whoever having devised or intending to devise any scheme or artifice to defraud

Charge of the Court

or for obtaining money or property by means of false or fraudulent pretenses, representations or promises, for the purpose of executing such scheme or artifice or attempting to do so places in any post office or authorized depository mail matter, any matter or thing whatever to be sent or delivered by the postal service or takes or received therefrom any such matter or thing or knowingly causes to be delivered by mail according to the direction thereon, any such matter or thing, shall be guilty of an offense against the laws of the United States."

I referred earlier to the essential elements of a crime. To establish the offense of mail fraud, the Government must prove beyond a reasonable doubt three essential elements:

One, that the defendants devised a scheme or artifice to defraud or to obtain money by means of false or fraudulent representations as charged in the information.

Two, an intent to defraud on the part of the defendants, and;

Three, use of the mails in furtherance of that scheme or artifice.

Keep in mind that the burden is always upon

Charge of the Court

the Government to prove beyond a reasonable doubt every essential element of the crime charged. The law never imposes upon the defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

Now, as to the first element that the defendants devised a scheme or artifice to defraud or to obtain money by means of false or fraudulent representations as charged in the information. A scheme or artifice is merely a plan for the accomplishment of an object. The word "scheme" and "artifice" as used in the statute include any plan or course of action intended to deceive others and to obtain by false or fraudulent pretenses, representations or promises money or property from persons to deceived.

Fraud is a generic term which embraces all the means which human ingenuity can devise and which are resorted to by one individual to gain an advantage over another by false misrepresentation, suggestion, or by suppression of the truth. Thus, a scheme to defraud is merely a plan to obtain money or property or some advantage of value by trick or deceit.

A statement or representation is false or fraudulent within the meaning of this statute if known to be untrue or if made with reckless indifference as to its truth or falsity and made or caused to be made with the intent to deceive.

A false or fraudulent representation may be made by statements of half truths or the concealment of material facts as well as by affirmative statements or acts. Sometimes a half truth is no better than an outright falsehood and a fraudulent misrepresentation may be affected by half truths calculated to mislead. Having chosen to speak, there may be an obligation to state all the facts which are necessary to a proper understanding of the particular subject matter --

MR. GOLDMAN: Your Honor, it's hard to hear.

THE COURT: Turn on the microphone.

A statement, although literally true, may nevertheless be false if when interpreted in the light of the effect it would produce on the mind of those whom it was calculated to influence, it would create a false impression of the true state of affairs. Since the mail fraud statute requires only that there be a scheme to defraud and not

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actual fraud, the Government is not required to prove that the customers here actually sustained any losses in order to establish the existence of a scheme to defraud those customers.

You may have noted when I read the information that some of the specific misrepresentations charged to the defendants referred to actual facts which could have existed at the time the representations were made. For example, paragraph 5-A alleges that the defendants represented that Federal Coin Reserve, Inc. was a large, established company which had been in business for many years. At the time, that representation was made, if it was made, it was either true or false. If it was false and if made with an intent to defraud the listener, then it may be considered by you as a fraudulent misrepresentation.

Some of the other representations, however, were not of existing facts but were in effect promises of future conduct on the part of Federal Coin Reserve, Inc. For example, paragraph 5-C sets forth as one of the alleged misrepresentations that Federal Coin Reserve, Inc. would repurchase coins for at least the price paid, with a representation

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which promises future action on the part of Federal Coin Reserve, Inc. If you find that it was made, obviously you cannot determine the truth or the falsity of the promise itself. A promise is a promise.

The test with such promissory representations, therefore, is whether at the time the promise was made, Federal Coin Reserve intended to keep that promise. If you determine with respect to any of these representations that Federal Coin Reserve did intend to keep the promise, then that representation would not be fraudulent.

If, on the other hand, you determine that the promise was in fact made and that at the time it was made there was no intention on the part of the defendant to keep the promise, then you may consider the promise also as a fraudulent misrepresentation.

Keep in mind, however, that for a misrepresentation to be fraudulent, it must be material and that applies whether it is an affirmative false statement, an omission of fact necessary to portray a true picture of what the facts really are or a promissory misrepresentation. By material, I mean simply facts which could reasonably be expected to

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induce a person to decide whether to act or not to act and in this case to purchase or not to purchase coins from Federal Coin Reserve.

While a number of false and fraudulent representations are alleged in the information, it is not incumbent upon the Government to prove each and every one of them, but it is incumbent upon the Government to prove one or more and in any case, a sufficient number of them to indicate and satisfy you beyond a reasonable doubt that the scheme alleged was actually set up.

In summary, therefore, with respect to the representations alleged in paragraph 5 of the information, you must determine, 1, whether the representation was made.

2, if made, whether it was true or false, and

3, if false, whether it was material.

In addition, if you find that material, false representations were in fact made, then you must determine whether they were made with an intent on the part of the defendants to defraud the customers of Federal Coin Reserve and that brings us to our second essential element of crime, an intent to defraud.

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A fraudulent intent is one of the essential elements of the offenses with which the defendants are charged. To act with intent to defraud means to act voluntarily and intentionally and with the specific intent to deceive, ordinarily for the purpose of either causing some financial loss to another or bringing about some financial gain to oneself.

Fraudulent intent may not be presumed or assumed. It is permanent and may not be imputed. One is chargeable with his own personal intent, not with the intent of some other person.

Bad faith is an essential element of fraudulent intent. Good faith constitutes a complete defense to one charge with an offense of which fraudulent intent is an essential element. One who acts with honest intention is not chargeable with fraudulent intent. One who expresses an opinion honestly held by him or a belief honestly entertained by him is not chargeable with fraudulent intent, even though such opinion is erroneous and such belief is a mistaken belief. Evidence which establishes only that a party made a mistake in judgment or an error in management, or was careless does not establish

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fraudulent intent.

In order to establish fraudulent intent on the part of a person, it must be established that such person voluntarily and intentionally attempted to deceive another. One who voluntarily and intentionally deceives another is chargeable with fraudulent intent notwithstanding the manner and form in which the deception was attempted.

The purpose of those words "voluntarily and intentionally" is to insure no one will be convicted for an act done because of mistake, or accident or other innocent reason.

Intent ordinarily may not be proved directly because there is no way of directly fathoming or scrutinizing the operations of the human mind; but you may infer a defendant's intent from the surrounding circumstances.

(Continued next page.)

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THE COURT: (Continuing) You may consider any statement made and done or omitted by a defendant and all the other facts and circumstances in evidence which indicate his state of mind. In considering whether or not a defendant acted in good faith, you are instructed that a belief by a defendant, if such a belief existed, that ultimately everything would work out so that no one would lose any money, such a belief does not require a finding by you that he acted in good faith. No amount of honest belief on the part of a defendant that his venture will succeed in such a way that no one suffers any loss will excuse fraudulent actions by him or false representations by him which may subject others to the possibility of such losses.

You will recall that yesterday I asked you to put the testimony of Dr. Calderone and Mr. Walter in a separate compartment in your mind so that it could be used only on the questions of intent, plan and absence of mistake or accident. I have some further comments with respect to the use of such testimony.

In that connection, you may consider in determining whether a defendant acted willfully and

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intentionally the fact, if you find it true, that he engaged in other transactions similar to those charged in the information. The fact, however, that the accused may have committed another offense at some time is not any evidence or proof whatever that at another time the accused committed the offense charged in the information, even though both offenses are of a like nature. Evidence as to alleged offenses of a like nature may not be considered by you in determining whether the accused did the particular acts charged in the indictment. Nor may such evidence be considered for any other purpose whatever, unless you first find that other evidence in the case standing alone establishes beyond a reasonable doubt that the accused did the acts charged in the indictment, leaving aside only the question of whether the accused did it knowingly, intentionally and willfully.

If you should find, beyond a reasonable doubt, from the evidence in the case that the accused did the act charged in the -- I have said indictment -- it should be information -- but you understand that by now, I'm sure -- if you find beyond a reasonable doubt from the evidence in the case that the accused

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did the acts charged in the information, then you may consider the evidence as to the claimed other offenses of a like nature, but only in determining the state of mind, knowledge, intent or willfulness with which the accused did the acts charged in the indictment -- information.

Where all the elements of a claimed offense of a like nature are established by evidence which is clear and conclusive, the jury may, but it is not required to, consider those offenses in determining whether in doing the acts charged in the information, the accused acted willfully, voluntarily and with specific intent and not because of mistake or accident or other innocent reason.

A question for your consideration in this case as to each defendant is whether he knew that false or fraudulent representations were made to prospective purchasers. As a matter of fact, alleged misrepresentations were made by salesmen of Federal Coin Reserve. With respect to those, a defendant may be held criminally responsible only if he knew that such misrepresentations were being made to the customers. Knowledge of notice may be established by circumstantial evidence. If it

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appears that a certain condition has existed for a substantial period of time, and that a defendant had regular opportunities to observe the condition, then you may, but are not required to, draw the inference that he had knowledge of the condition. But it is not the compulsory inference and you need not find that. That is for your determination, based on all the facts in the record.

In addition, knowledge that the representations were false or fraudulent is essential to the offense charged. The fact of knowledge may be established by direct or circumstantial evidence, just as any other fact in the case. Knowledge may be proven by a defendant's conduct, since we have no way of looking into a person's mind directly. In this connection, bear in mind that one may not willfully and intentionally remain ignorant of a fact important and material to his conduct in order to escape the consequences of the criminal law.

If you find from all the evidence, beyond a reasonable doubt, that a defendant believed that false or fraudulent representations may have been made by salesmen, or that representations which he knew were made may have been false or fraudulent,

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and if you further find that he deliberately and consciously tried to avoid learning that fact in order to be able to say, should he be apprehended, that he did not know, you may treat that deliberate avoidance of positive knowledge as the equivalent of knowledge.

In other words, you may find the defendant acted knowingly, if you find that either he actually knew of the false or fraudulent representations, or that he deliberately closed his eyes to what he had every reason to believe was the fact.

I should like to emphasize, however, that the requisite knowledge in this connection cannot be established by demonstrating merely negligence or even foolishness on the part of a defendant.

The third essential element of the crime of mail fraud is use of the United States mails in furtherance of the scheme to defraud. It is not necessary that the use of the mails by the participants themselves be contemplated or that a defendant do any actual mailing or specifically intend that the mails be used. It is sufficient if the mails were in fact used to carry out the scheme and if the use of the mails by a participant or somebody else

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was reasonably foreseeable.

While it is not necessary that the Government prove that a defendant actually used the mails himself, it is necessary that the Government prove beyond a reasonable doubt that it was foreseeable that the defendants' scheme would involve use of the mails. Actual use of the mails in furtherance of the scheme may be considered as evidence that use of the mails was foreseeable.

In considering whether the mails were in fact used in furtherance of the scheme, you may consider the testimony of persons who testified that they received brochures, coins or letters from the defendants in the mail, as well as any other circumstantial or direct evidence of the use of the mails.

Under the mail fraud statute, each separate use of the mails in furtherance of the scheme to defraud constitutes a separate offense. That is the reason the charges relating to the fourteen names individuals are set forth in separate counts of the information. The gist of the offense charged in the information is the use of the mails in carrying out or attempting to carry out a scheme to defraud as

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charged and not the scheme itself.

So, the success or failure of the scheme is immaterial, and it is not necessary to show that any person was in fact defrauded. The mere fact that one or more customers lost money on their dealings with Federal Coin Reserve does not by itself establish a scheme to defraud.

However, the fact that customers actually lost money in those dealings is some evidence of the intent of the seller and you may weigh that evidence along with all the other evidence in the case in determining whether or not the defendants or any of them acted with intent to defraud.

Now, you will recall that I said earlier that there were two sections of the law that the defendants are charged with violating. The first was the mail fraud statute, Section 1341 which we have already discussed.

The other section which you must consider is Section 2 of Title 18, which pertains to persons who aid and abet others in the commission of a crime. Section 2 reads, "insofar as pertinent here, "Whoever commits an offense against the United States or aids, abets, counsels, commands, induces

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or procures its commission is punishable as a principal."

Whereas in the present case two or more persons are charged together with the commission of an offense, the Government is not required to prove that one of the defendants alone did all of the things required to make out the offense. On the contrary, under Section 2, Title 18, all those who aided and abetted in the commission of an offense or caused an act to be done which if directly performed would be an offense, are treated as equally guilty of the crime. That is, they are punishable as principal offenders.

Hence, if a person voluntarily unites his efforts with one or more others to bring about the commission of a crime, he is equally guilty with the others and they with him, provided that he is conscious of the nature of the criminal venture and intentionally associates himself in its furtherance and actively participates in bringing about accomplishment of the criminal venture.

Keep in mind, however, that mere association is not a crime. There is no such thing under our laws as guilt merely by association. The mere

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presence of a defendant where a crime may have occurred, even coupled with that defendant's knowledge that a crime is being committed, or the mere negative acquiescence by a defendant in the criminal conduct of others, even with guilty knowledge, is insufficient to establish guilt.

An aider and abettor must have some interest in the criminal venture. In order to convict a defendant, you must be convinced beyond a reasonable doubt that he voluntarily and intentionally participated in a criminal venture, in an effort to make it succeed. The Government does not contend and is not required to prove that each and every defendant personally employed a device, scheme or artifice to defraud. Therefore, it is not necessary for a conviction of a defendant on any of these counts that you find that he did every or any act necessary to complete the offense. Anyone who aided or abetted another person to commit an illegal act is himself guilty of committing that illegal act.

While there is no precise rule as to what acts constitute aiding and abetting, it is enough that a defendant in some way associate himself with

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the criminal venture and that he participate in it as in something he wishes to bring about or, in other words, that he seeks by his action to make it succeed.

With respect to each charge -- each criminal charge against a defendant, the Government must prove every element of the crime charged beyond a reasonable doubt. If the Government fails as to any element, you must acquit. The fact that one element of the crime may or may not exist, has no bearing upon any other element. If you conclude that one element of the crime has been established, you may not infer solely from the existence of that element the existence of any other element of the crime. If any element of the crime has not been established as to a defendant beyond a reasonable doubt, your verdict as to that crime must be not guilty.

On the other hand, you must convict the defendant if as to him each of the elements of the crime has been proved beyond a reasonable doubt.

A difficult aspect of any jury's duty is to determine the credibility of the witnesses and to weigh their testimony. You, the jurors, are the sole judges of the credibility of the witnesses.

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Credibility refers to the believability of their testimony and the weight their testimony deserves. Your determination of the issue of credibility very largely must depend upon the impression that a witness makes upon you as to whether or not he is telling the truth or giving you an accurate version of what occurred.

When you come into the Courtroom here and sit in the jury box, while the trial is going on, when you are deliberating in the jury room, you have your common sense, your good judgment and your experience with you. You decide whether or not a witness is straightforward and truthful, whether he attempted to conceal anything, whether the witness has motive to testify falsely, whether there is any reason why a witness might color his testimony. In other words, what you try to do, to use the vernacular, is to size the person up just as you would do in any important matter where you were undertaking to determine whether or not a person is truthful, candid and straightforward. Scrutinize the testimony given and the circumstances under which each witness testifies and every matter testified which tends to show whether a witness is worthy of

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belief. Consider each witness' intelligence, his motive and state of mind, his demeanor and manner while on the witness stand. Consider his ability to observe the matters as to which he testified, whether he should impress you as having an accurate recollection of those matters. Consider the relation which each witness might bear to either side of the case. Consider the manner in which each witness might be affected by the verdict. And the extent to which, if at all, each witness is either supported or contradicted by other evidence, evidence that at some other time a witness has said or done something which is inconsistent with the witness' testimony at the trial may be considered by you for purposes of judging the credibility of that witness.

If adopted by the witness, that is if the witness has admitted before you that he made the prior statement, it may also be used as affirmative evidence in the case. You may also consider the failure of the witness to disclose information on prior occasions when the opportunity to do so presented itself as being inconsistent with that witness' testimony at the trial. Whether a prior

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statement is inconsistent is a fact question, solely for your determination.

You also determine whether the failure of a witness to reveal information prior to this testifying before you, for example, in reports or in statements he may have made, you determine whether that is inconsistent with his present testimony. In making that determination, you should consider all the facts and circumstances attendant at the time of making the prior statement or the omission of information. In determining whether the prior statement is inconsistent with the testimony given before you, you may take into consideration the nature of the examination here and the purpose of the statement on the prior occasion.

You may take into consideration normal variations in retelling an event, to determine whether the statements are truly inconsistent or merely a difference in describing an occurrence. It is for you and you alone to determine whether an inconsistency is to a material or an immaterial fact and what effect the inconsistency has on the witness' credibility.

A witness, however, may be inaccurate,

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contradictory or even untruthful in some respects and yet be entirely credible in the essentials of his testimony.

The ultimate question for you to decide in passing upon credibility is: Did the witness tell the truth here before you as to the essential matters? If you find that any witness, and this applies alike to Government and defense, willfully testified falsely as to any material fact, you have a right to reject the testimony of that witness in its entirety. Or you may accept that part or portion which you believe to be credible.

The fact that some Government witnesses may be Government employees does not entitle their testimony to any greater weight or consideration than that offered to any other witness in the case. You will evaluate their credibility the same way you do that of any other witness.

The weight of the evidence is not necessarily determined by the number of witnesses testifying on either side. You should consider all the facts and circumstances in evidence to determine which of the witnesses are worthy of greater credence. You may find that the testimony of a smaller number of

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witnesses on one side is more credible than the testimony of a greater number of witnesses on the other side.

Now, the law permits, but does not require, a defendant to testify on his own behalf. Obviously, a defendant has a deep personal interest as a result of his prosecution. Indeed, it's fair to say he has the greatest interest in the outcome. Interest creates a motive for false testimony and a defendant's interest in the result of his trial is of a character possessed by no other witness. In appraising the credibility of these three defendants who testified here, you may consider that any defendant has a strong motive to lie to protect himself. But you may also consider that he takes a real risk in subjecting himself to cross-examination.

In addition, simply because a person has a vital interest in the end result, it by no means follows that he is not capable of telling a truthful and straightforward story. It is for you to decide to what extent, if at all, a defendant's interest has affected or colored his testimony.

Ordinarily, I do not comment in my instructions on any aspect of the evidence in the

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case. There is one circumstance here while I feel I must make a comment upon. In his summation, Mr. Goldman made a point over why the subject of Brigadoon Scotch was brought into this case by the Government. Mr. Goldman pointed out and correctly so, that there is no guilt by association and I re-enforce what Mr. Goldman said on that score.

With respect to Brigadoon Scotch, if there is any implication in any of the evidence before you that there may have been something improper in its operations, I instruct you to disregard it and block it out from your mind, pay no attention to it. You may, however, consider the testimony with respect to Mr. Sol Rauch's connection and activities with Brigadoon Scotch in determining the extent of the work which may have been done by him during the year 1974, and you may consider it solely in connection with the credibility of Sol Rauch and of Marc Rauch in connection with their claim that Sol Rauch was not involved during that period of time in the day-to-day operations of Federal Coin Reserve. It is for that sole purpose that you may consider the evidence which was brought out before you with respect to Brigadoon Scotch.

You are to draw no unfavorable inference against the defendants or any of them because of the fact that they were tried together. You must give separate consideration and render a separate verdict with respect to each defendant. Each is entitled to have his guilt or innocence determined from his own conduct and from the evidence which applies to him, as if he were being tried alone.

Guilt or innocence is an individual matter and when you deliberate upon the verdicts in this case, you must determine the guilt or innocence of each defendant separately and individually. You must reach a verdict on each of the counts, 1 through 6 and 8 through 15 of the information, and on each of those counts you may find any or all of the defendants either guilty or not guilty.

I have sought not to comment on the evidence in any detail or to give any impression as to my own view, if I have one, of the relative weight of the evidence in this case. However, if I have done so inadvertently, I ask you to disregard it entirely, because you are the sole judges of the facts here.

Under your oath as jurors, you cannot allow a consideration of the sentence which may be imposed

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upon a defendant, if he is convicted, to enter into your deliberations or to influence your verdict in any way. In the event of a conviction, the duty of imposing sentence rests solely with the Court. In your deliberations, you are not to consider whether you approve or disapprove the statutes which the defendants are charged with violating. The only question for you to consider is whether the Government has proved, beyond a reasonable doubt, the essential elements of the crimes as I have explained them.

Now, let us discuss briefly your deliberations, how you should go about reaching your verdict.

When you retire to the jury room, your first duty will be to elect your foreman or forelady who will preside over your deliberations. During those deliberations, you should assume the attitude of judges of the facts, rather than partisans or advocates. In that way you will be making a high contribution to the administration of justice.

Your duty is to decide the case solely upon the evidence, to weigh the evidence in the case and to determine the guilt or innocence of the defendants solely upon the basis of such evidence and these instructions. Each of you as jurors is entitled to

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your own opinion, but each of you should exchange views with your fellow jurors. That is the very purpose of jury deliberation, to discuss and to consider the evidence, to listen to the arguments of your fellow jurors; to present your individual views; to consult with one another and to reach an agreement, based solely and wholly on the evidence, if you can do so without violence to your own individual judgment.

Each of you must decide the case for yourself after consideration with your fellow jurors, but you should not hesitate to change an opinion, which after discussion with your fellow jurors appears to you to be erroneous.

However, if after carefully considering all the evidence and the arguments of your fellow jurors you entertain a conscientious view that differs from the others, you are not to yield your judgment simply because you are out-numbered. Your final vote must reflect your conscientious view as to how the issues should be decided.

The charges here are most serious. A just determination of this case is important to the public; it is equally important to these defendants. Under

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your oath as jurors, you must decide this case without fear or favor and solely in accordance with the evidence and the law.

If the Government has failed to carry its burden as to a defendant, your sworn duty is to acquit. If it has carried its burden as to a defendant, you must not flinch from your sworn duty. You must convict.

Shortly after you retire to deliberate, I will send in to you a copy of the information and each of the exhibits which has been admitted into evidence. If you wish to have some portions of the testimony repeated, you may make the request by a note to the marshal and I will then call you back into the Courtroom and have those portions read to you.

You must report a verdict as to each defendant on all the fourteen counts which remain. You may find him guilty or not guilty on any or all of the counts, and the verdict on each count and as to each defendant must be unanimous.

I have prepared a form of verdict which you may find helpful in keeping track of your verdicts as you reach them. The marshal will give it to you

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along with the information and exhibits.

The marshal will be available outside the jury room to report when you have reached your verdict or to let me know if there are any questions which you wish to have answered. When you have reached your verdict and are ready to report, simply advise the marshal but do not disclose to him or her what your verdicts are.

I will have your foreman or forelady announce them orally back here in the Courtroom. There will now be a short recess during which counsel will review the charge with me to make certain that nothing has been omitted or misspoken.

Please retire briefly to the jury room but do not yet discuss the case until I have brought you back here just once more.

(Jury leaves the Courtroom.)

(Continued next page.)

(The following occurred outside the presence of the jury:)

THE COURT: Are there any exceptions or further requests?

MR. GOLDMAN: Yes, your Honor. In the first place, Count 3, I respectfully ask that you instruct the jury to change the name -- no, no -- I ask that count be stricken --

THE COURT: You've made that request twice before. I've denied it. I still deny it.

MR. GOLDMAN: Then I ask that you instruct the jury to consider the name Spector changed to Gisske.

THE COURT: You want me to bring that to their attention?

MR. GOLDMAN: Yes, your Honor.

THE COURT: All right.

MR. GOLDMAN: Secondly, if you will recall, your Honor, with reference to this matter of Mr. Woodfield saying he could bring in a full 500, you didn't refer to it at all. You said you would and I don't know how you're going to word it. I've made a motion for a mistrial, of course, but that was denied.

Do you want that portion read, your Honor?

MR. WOODFIELD: Your Honor, as I recall you said you would consider it. I strongly object to any comment on it. I think your Honor stated and your Honor is quite right that I was not the least bit out of line by making that comment. I see no reason to pick out one individual statement in anyone's summation and reflect upon that in the charge to the jury.

MR. GOLDMAN: Will your Honor listen -- won't it be better if your Honor hear -

THE COURT: Anything further?

MR. WOODFIELD: I have no objections, your Honor.

MR. GOLDMAN: Mr. Sol Rauch, do you have anything to say?

MR. S. RAUCH: Thank you, your Honor, I think your charge was extremely fair.

MR. WOODFIELD: Your Honor, as a complete aside, yesterday when we were in your chambers, when I referred to what I considered the way your Courtroom was conducted, I used the term "loose". I realized I meant the term relaxed. I hope your Honor interpreted it as such.

THE COURT: I'm aware what you had in mind. I was tempted to put something on the record, but I

did not consider it loose.

MR. WOODFIELD: I'll correct the record now,
your Honor.

THE COURT: If I did not let attorneys go
quite as far as I do, it wouldn't be relaxed, that's
for sure.

(Above referred to portion read back by the
Reporter.)

MR. GOLDMAN: I'm referring to "500".

THE COURT: I know what you're referring to.
That's just about the way I recollected it. I see no
prejudicial effect from it and I don't think it
would be appropriate at this time to bring it, again,
to the jury's attention. There's nothing I'm going
to do with respect to that.

I will grant your request, though, to equate
Spector with Gisske.

Bring the jury back in.

(Jury enters the Courtroom.)

THE COURT: One point I have been asked to
bring to your attention, ladies and gentlemen. Count
3 of the indictment refers to a Nancy Spector, at
a post office box in Brooklyn. I've been asked to
remind you that Nancy Spector is, of course, Miss
Gisske, the postal inspector who testified. I forgot

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what her first name was.

MR. GOLDMAN: Theresa.

THE COURT: Theresa Gisske.

The counts of the indictment pertaining to Nancy Spector, of course, hinges on Miss Gisske's testimony.

Would you swear the marshals, please?

(Two marshals were sworn by the Clerk of the Court.)

THE COURT: Ladies and gentlemen, your oath sums up your duty here; that is, without fear or favor to any man, you will well and truly try the issues between these parties according to the evidence given to you in this Court and the laws of the United States.

You may now retire to the jury room and begin your deliberations.

(Jury leaves the Courtroom.)

THE COURT: Counsel, Mr. Hertzfeld is going to pull together the exhibits to go into the jury. He may need your assistance in that regard for a few minutes.

(Time noted: 3:35 o'clock p.m.)

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(Time Noted: 5:20 p.m.)

(Jury not present)

THE COURT: Gentlemen, I have a note from the Jury which I believe you have probably seen. It is marked Court's Exhibit 11. It says, "Your Honor, can we have a definition of," then in parentheses it says, "willfully," and I just don't know what the next word is. It could be, "enter."

I just can't figure it out. Does anyone have any suggestions?

MR. WOODFIELD: You mean as to the interpretation of the word?

THE COURT: Yes.

MR. WOODFIELD: Assuming it is the word "enter" I still have difficulty with it.

THE COURT: I was wondering if it's from the right Jury.

MR. WOODFIELD: I think it is "enter."

MR. GOLDMAN: There is no question.

MR. WOODFIELD: But that doesn't completely resolve it.

THE COURT: Let's bring in the Jury and talk to the Foreman and see what they have in mind?

MR. WOODFIELD: I think it would certainly appear to be an item we discussed. I think it is an

item we discussed a long time ago with regard to Mr. Goldman's Charge. That is he made that argument in summation, there has to be a scheme that commenced at a time when these individuals took over the company. I think that may be the area of their confusion.

I think as I said to Mr. Goldman, that is not the law and I thought it would be made clearer in your charge. Now that I think about it, it wasn't.

Mr. Goldman did argue that in summation and that is not law. I believe that a scheme could be devised at any time during the period named in the indictment. Whether or not--the issue is whether or not it was in existence at the time of the mailings and it was in furtherance of it.

THE COURT: I think they're talking about willfully enter into a scheme, artifice or fraud.

MR. GOLDMAN: Your Honor, instead of trying to interpret it and discuss what I said on summation, here is a note from the Jury which says they want Your Honor's definition on "willfully enter." Not the reason for their wanting it.

It seems to me, and I respectfully submit that you have now a duty, please forgive me for saying it, you have a duty to give them a definition and before

they come in to make up your mind what you shall tell them as to the meaning of the phrase "willfully enter." You are not part of their deliberations, neither am I. Neither is Mr. Woodfield. I think that Mr. Woodfield, if he wants to, should give you his opinion or suggestion as to what you should define it as. Then ask me. Then Mr. Sol Rauch. Then you will make up your mind and tell us what it is so that we can discuss it.

THE COURT: I think we are speculating as to first what the Jury asked and secondly, even if it does say "willfully enter", we're still speculating as to "willfully enter" what:

MR. GOLDMAN: It is not our job to speculate on what they think.

THE COURT: I'm not going to answer questions in a vacuum. I'm going to have to find out what they're talking about. Then if I think I need to further discuss it with you, I will.

Bring in the Jury.

(Jury returns from their deliberations at 5:25 p.m.)

THE COURT: Ladies and Gentlemen, I have your note which has been marked Court's Exhibit 11. I need some help. Who is your Foreman?

JUROR NUMBER ONE: I am.

THE COURT: You are Mr. White?

JUROR NUMBER ONE: Yes, Sir.

THE COURT: It says, "Can we have a definition of willfully," and I can't read the next word.

JUROR NUMBER ONE: It should be willfully intent.

JUROR NUMBER FIVE: Willful intent.

THE COURT: Is that a term which appears in the information?

JUROR NUMBER ONE: I think it is the second page.

THE COURT: Paragraph One on Page Two of the information? Under the heading Count One through Five. It says commencing and so forth and continuing thereafter. The Defendants did knowingly and willfully devise and intend to devise. Is that it?

JUROR NUMBER ONE: That's right.

THE COURT: Your question is what do the words willfully and intend mean in that context?

JUROR NUMBER ONE: Yes, Sir.

THE COURT: All right. I'll hold that for a moment. I have to think about it for a bit.

It is now 5:30. We are at a stage of the case where our roles are somewhat reversed. The

Jury is pretty much in control from what goes on from here in terms of your deliberation. We will largely be governed by what it is the Jury wishes to do.

We have several possibilities. We can continue deliberations today for as long as you care to deliberate. If you feel you are anywhere near your verdict, you may wish to do that. If you feel that you are not, then you may wish to consider the possibility of recessing.

That raises the question of when we resume. I would not permit you to deliberate on Sunday. But, if you wish to deliberate on Saturday, I will direct that it be done. If you wish to recess until Monday and resume your deliberations at that time, I would permit you to do that.

If your decision with respect to all of that is you wish to stop at this point and resume either tomorrow or Monday, then I would defer answering your question until you start, so that at least the answer to your question would be fresh in your minds.

If on the other hand, you wish to continue deliberations this afternoon or into the evening, then I will go right to work on what it is you had asked.

If you want to step into the Jury Room and decide what you wish to do with respect to your deliberations?

(Jury excused at 5:30 p.m.)

THE COURT: Yes, Mr. Woodfield?

MR. WOODFIELD: Well, again I realize Your Honor, that in your charge--in your charge, I don't know whether you defined knowingly and willfully. If you Your Honor might consider taking a standard charge on knowingly and willfully from a standard charge or from whatever and give a charge to that effect?

THE COURT: Voluntarily and intentionally?

MR. WOODFIELD: Knowingly and willfully. I think they're all the same. I would say a standard charge on that. I forget exactly what Your Honor stated.

MR. GOLDMAN: It is the word intent that they asked about.

THE COURT: I spent about eight pages on intent, which I can read to them.

MR. GOLDMAN: It's knowingly and intend. That's what they want, knowingly intend.

Excuse me, I mean willful intent. Perhaps, would Your Honor obtain a definition from both sides

on that rather than--

MR. SOL RAUCH: May I say something?

MR. GOLDMAN: In a moment. Rather than rereading something they heard, something seems to be bothering them. Maybe a short definition is what they want.

THE COURT: That may well be.

MR. SOL RAUCH: I was going to suggest that since everybody seemed to feel that the original charge is--maybe it didn't satisfy everybody, but I think it came very close to even--it was extremely fair. Why not repeat it in reference to those words, that portion of the charge.

MR. GOLDMAN: Well, I disagree with you. Shall we first find out what they intend to do about the recess?

THE COURT: That would be an important step here.

MR. GOLDMAN: Okay, we'll wait. If they intend to deliberate--

THE CLERK: They have a note.

(Jury returns to Court Room at 5:32 p.m.)

THE COURT: What is the Jury's pleasure, Mr. White?

JUROR NUMBER ONE: We feel we can't make a decision tonight. But we would like to start fresh

on Monday morning.

THE COURT. On Monday morning, all right. Then we will recess at this point until 9 o'clock Monday morning.

At that time I will try to respond to your inquiry. It is particularly important that over the weekend you not discuss this case with anyone and that you not even discuss it amongst yourselves while you are leaving here or when you assemble a little before 9 o'clock on Monday morning. The whole process of Jury deliberations is one in which all 12 of you should be present at all times.

In other words, any thoughts that anyone has and expresses should be shared by all of you. For that reason I ask you not to continue any discussions of the evidence in the case or any other aspect of the case until you come back here Monday morning and I will call you into the Court Room just for the purpose of--first I'll call you in for the purpose of responding to your question. Then you'll resume your deliberations and at that point you can get back to discussing the case.

I hope you all have a nice weekend and I'll see you here Monday morning at 9 o'clock.

(Whereupon, the Jury was excused at 5:35 p.m.)

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Charge of the Court

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THE COURT: What is your pleasure with suggestions to me as to how to respond to this note? Do you want to hash this out at a quarter of nine Monday morning?

MR. GOLDMAN: Yes, Your Honor.

THE COURT: All right. We are recessed until then.

MR. GOLDMAN: A quarter to nine?

THE COURT: Yes.

MR. GOLDMAN: Have a nice weekend, Your Honor.

THE COURT: Thank you. Same to you all.

(Whereupon, Court adjourned until 8:45 a.m. on April 11th, 1977.)

(Time Noted: 9:00 a.m.)

THE COURT: With respect to this question the Jury asked on Friday, Court's Exhibit 11, I have decided I am not going to try to answer it in its present form. I'm going to turn it back to the Jury and ask them to explain what they want. I think it's speculating too much to try to determine what they really want. The response of the Jury when I questioned them about it on Friday, wasn't consistent. So, I think I will ask them to state more fully in writing what it is they want to know, then we will answer it. Bring in the Jury.

(Whereupon, the Jury entered the Court Room.)

THE COURT: Good morning, Ladies and Gentlemen. Hope you had a nice weekend.

Back to the question which you asked on Friday, which I have marked Court's Exhibit 11, "Can we have a definition of willfully enter?"

There seemed to be some disagreement as to really what was intended to be asked.

I think before I attempt to answer the question I am going to ask you to go back into the Jury Room, the one in which you were deliberating, and write out a little more fully what it is you really want me to tell you. Then I will be able to respond to it,

and there won't be guessing on my part, and you will also have the information that you want. So, if you will go in and do that, I will answer your question as quickly as I can, and then you can proceed with your deliberations.

(Whereupon, the Jury left the Court Room.)

MR. GOLDMAN: Your Honor?

THE COURT: Is there something you wanted?

MR. GOLDMAN: Yes, I may be mistaken. I think you said to the Jury just now "willfully enter." Again, because their note was unsure, you meant willfully intent?

THE COURT: That's what the Foreman said, but one of the other Jurors said willfully enter. So, that's why I want them to tell me what they want, rather than have us guess.

At 9:30 I am commencing another trial. We will be running the two of them at once, so this one takes priority. When the Jury wants to be heard, I run the other Jury out, and go here. But, there will be other people in the Court Room and lots and lots of files. They say this one will take four weeks too.

(Whereupon a recess was taken at 9:05 a.m.)

(Continued on next page.)

(TIME NOTED: 2:00 p.m.)

MR. GOLDMAN: Your Honor, with reference to Juror Number Three, that woman--

THE COURT: Yes?

MR. GOLDMAN: In the event there is a verdict of guilty, you'll want to question her, right?

That's what you agreed upon?

THE COURT: I said I would at the request of either party.

MR. GOLDMAN: I would request it.

Now, if you question her, would you question her in Chambers?

THE COURT: I think so.

MR. GOLDMAN: It could be that some of the other Jurors might have heard it or--are you going to dismiss the Jury except for her?

Can you hold that Jury until you finish talking with her? You may find it necessary.

THE COURT: I think probably it might be wise to hold them until we get the matter cleared up.

MR. SOL RAUCH: There had been a request, Your Honor, on Friday for a definition of a word "willfully" or "willfully entered". This morning when His Honor instructed them to return to elucidate on that, I understand they sent a note in to the effect

that they had the definition or they had agreed on a definition.

I'm just wondering, Your Honor, if in light of the fact that a weekend went by, Saturday and Sunday, whether it's possible that a definition was obtained from the outside.

Would there be a way to ascertain anything like that?

THE COURT: First, give me the note. The note they sent marked Government Exhibit 12 says, "Please forget our request for explanation of information. Thank you."

I am not going to inquire as to why they ask me to forget their request of Friday. There are any number of possible explanations and there may be a different explanation in the mind of each Juror.

Bring in the Jury.

(Jury enters the Court Room.)

THE COURT: Mr. White, I understand the Jury has reached a verdict.

THE FOREMAN: We have.

THE COURT: Mr. Herzfeld?

THE CLERK: Mr. Foreman, Ladies and Gentlemen of the Jury, have you agreed upon a verdict?

JUROR NUMBER ONE: We have.

MINUTES OF PRETRIAL CONFERENCE IN COURT'S CHAMBERS
MARCH 1, 1977

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2 the ear marks of that would have been in everything
3 they touched.

4 Another reason that the Keogh Plan assumed
5 great significance at that time in the plans of Federal
6 was that they were moving toward convention business
7 and they were moving toward Keogh Plan business. Both
8 types of business I think are complete and lends
9 substance to what they call security sales and both
10 of them had built into it the inspection of the coins
11 for a greater length of time.

12 I think for example, Your Honor, the evidence
13 would show that the normal amount of time given to a
14 purchaser in the industry is either 5 or 7 days. A
15 few companies permitted 10 days. Federal Coin had
16 a 15 day inspection. That is the largest in the
17 industry, except there were some companies that per-
18 mitted you to have unlimited. A minority did exist.

19 But, with the Keogh Plan, I guess I said just
20 about what I can on that and a great amount of activity
21 went into that.

22 THE COURT: Another question on the question
23 of whether we are dealing with the sale of securities
24 or coins with respect to the last five counts of the
25 indictment. Is this a question of fact or is it a

Minutes of Pretrial Conference in Court's Chambers
March 1, 1977

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question of law?

MR. WOODFIELD: May I be heard just briefly on that?

THE COURT: Yes. You've asked me to charge it as a matter of law.

MR. WOODFIELD: Yes, but I'm not so sure. I was going to relay that to your Clerk.

THE COURT: I have to charge what the law is as to a security and leave it to the Jury.

MR. WOODFIELD: Just the other day I was trying to do some further research. I'm not satisfied one way or the other, and I'm still working on it. I intend to satisfy in my own mind what the answer is and when I do I'll certainly supply that to Your Honor and Clerk. I'm not sure on that charge, I have my doubts on it.

I think it may be something similar to a charge with regard to the use of Interstate Commerce, like in the Hobbs Fact Violation; that if you find A, B, C, D, E and F, therefore it is a security. I think the charge I gave you is too much in the conclusionary form. That is my thinking at the moment but I don't have a final opinion.

MR. S. RAUCH: Your Honor, on that point, may

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2 MR. WOODFIELD: Well, I forget--I'll have to
3 read it. But, as I recall it--one is mail coming
4 from Federal Coin and the other is mail going to Fed-
5 eral Coin.

6 THE COURT: I see. But with the same under-
7 lying misrepresentations?

8 MR. WOODFIELD: Yes, Your Honor, as well as
9 Count Eleven through Fifteen.

10 THE COURT: Those are the security frauds?

11 MR. WOODFIELD: Yes, but the misrepresentations
12 are the same.

13 THE COURT: Is it important that all of the
14 security aspect be in the case?

15 MR. WOODFIELD: Is it important?

16 THE COURT: Yes?

17 MR. WOODFIELD: Well, not in the sense that
18 Eleven through Fifteen could just have easily been
19 mail counts, if that is the point Your Honor is making?

20 THE COURT: I see one of the big issues in
21 the case is whether these are securities or not.
22 Even if they are securities you still come back to
23 the fraud and the same allegation that you have set
24 forth in Paragraph Five. Certainly they were opera-
25 ting by mail.

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2 MR. WOODFIELD: Yes.

3 THE COURT: Is the penalty significantly
4 different on the securities fraud?

5 MR. WOODFIELD: No, Your Honor, I see the
6 point you are making.

7 THE COURT: Why have extra issues for the Jury?

8 MR. WOODFIELD: I made an effort to cut this
9 case down, Your Honor. My thought is only that
10 Counts Eleven through Fifteen were mail counts. I
11 would still want to introduce all fifteen victim wit-
12 nesses, I think it is important. I certainly have not
13 considered or not introduced all of them and I found
14 I can't and I still want to adequately present the
15 case for the Government.

16 The next alternative obviously is we can't
17 wave a magic wand and make them mail counts. There
18 are many other alternatives, I could have the count
19 dismissed. In any event I would offer the testimony
20 of those five witnesses as similar acts and in fact
21 at this stage of the case I need those counts, I
22 need those witnesses to testify, so I would say to
23 Your Honor I would like to proceed in the case as it
24 is set out in the indictment and possibly at the end
25 of my case I would consider, if the issue of securities

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2 such that it really hogs down the Court's time,
3 possibly not to submit those counts to the Jury. But,
4 in any event, I would want to introduce the testimony.

5 THE COURT: Suppose we were to change them
6 with the consent of all the Defendants to just mail
7 fraud counts.

8 MR. WOODFIELD: Well, I don't know whether
9 it can be done that way. I doubt it but I would agree
10 to it.

11 THE COURT: One way you can do it is to dis-
12 miss those five and have a superseding information
13 on which they will waive indictment. Then you can
14 consolidate with them and we can go to trial.

15 MR. WOODFIELD: That's the other alternative.

16 THE COURT: It's rather informal, but an easier
17 way is to stipulate to the end.

18 MR. GOLDMAN: We would object to it, Your
19 Honor, for this reason: by the Government's bringing
20 in this business with the Securities and Exchange
21 Commission, a violation of their rules, that these
22 people were selling securities out of the scores and
23 scores of customers, we have irrefutable proof that
24 they bought only one thing. Coins, nothing else.
25 They bought no certificates. They bought no stock.

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2 They bought bonds. They bought physical things made
3 out of metal for which they paid.

4 Now, let the Jury hear they are being charged
5 with some erroneous things, it will help us. It's
6 all right for him to bring it in in the first place
7 and cause these people anguish for two years and now
8 to say we will eliminate that? I know that the Court's
9 time is terribly important and I know that Your Honor
10 would like to dismiss these counts, but it seems as
11 if we are rejecting a gift. But, it is not a gift to
12 us. I would prefer that the SEC thing remain there
13 because in the first place if they were found guilty
14 of everything, I don't think and I'm presuming that
15 it would not change the sentence by one iota. It is
16 all one story. But, it is important for the Jury to
17 hear what these people went through when all they did
18 was sell coins and nothing else, like about thirty
19 other concerns or more than that and we have litera-
20 ture they did exactly the same thing and they were not
21 charged with anything.

22 THE COURT: You're saying you do not consent
23 and obviously I cannot do it without your consent.

24 MR. GOLDMAN: Well, he's Pro Se.

25 MR. S. RAUCH: I would like to say a couple of

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2 words and address most of it to Mr. Goldman. I
3 say this, Sam, that the burden of tackling those
4 additional counts on the law, not so much on the
5 factual basis, but the law itself, the Government is
6 going to try to prove it was a security and it was in
7 the nature of a certificate or stock certificate.

8 THE COURT: . An investment contract.

9 MR. S. RAUCH: They're talking about these
10 investment contracts and it is a horse of a different
11 color and I am positive they could not sustain it
12 based upon what I know about the situation.. But, what
13 I'm saying to you, Sam, is His Honor is trying to
14 narrow the issues and if we go to trial on the simple
15 fact of whether there were misrepresentations made, the
16 closer we're getting to narrowing the issues, it will
17 be easier for us to sustain our defense.

18 MR. GOLDMAN: Now, Mr. Woodfield stated in the
19 beginning, he kept on using a certain number of words,
20 but it's his privilege. He never used the word
21 purchasor, investor. I want to eliminate that.

22 Now, if you eliminate the SEC count so as to
23 eliminate the trial, I will follow Mr. Rauch's sugges-
24 tions, since he's got perhaps more at stake than I
25 have. I don't want to over ride him since he's an

1 attorney. But I don't want the word investment in
2 the indictment. This is a purchase of coins, that's
3 fine. If we can eliminate the SEC and the purchase of
4 coins, I have no objection.
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6 But, if he's going to say investment contract,
7 I don't know what that is. I bought coins myself.

8 THE COURT: Unless a contract is a security
9 under the Security's Law.

10 MR. GOLDMAN: If we can eliminate those counts--

11 THE COURT: I raise the question whether we
12 can modify those counts. I don't know that Mr.
13 Woodfield would agree to striken them from the indict-
14 ment, but converting them to mail fraud. The question
15 comes to mind isn't mail fraud a lesser included
16 offense? You have an alleged use of the mails? You
17 have an allegation of fraud, such as fraud to a secur-
18 ity. Not even if it were a lesser included offense,
19 it doesn't solve any problems.

20 I suspect going back to our point on the in-
21 vestment, Mr. Goldman, some of the representations
22 that were made were--it will be testified they were
23 using the terms investment and whatever we do the term
24 is not going to stay out of the trial.

25 MR. GOLDMAN: Judge, anything besides--other than

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2 for a consumption into his body, anything else is for
3 investment.

4 THE COURT: That may be.

5 MR. GOLDMAN: I still don't understand Your
6 Honor's suggestion. We are just discussing--

7 THE COURT: We'll just change counts eleven
8 through fifteen instead of having security fraud we'll
9 change them to mail fraud.

10 MR. GOLDMAN: Your duplicating them.

11 THE COURT: He says he needs fifteen counts
12 in order to prove his case. Even if I were to strike
13 them he would offer the testimony of the witnesses
14 as similar acts which he would be entitled to do.

15 MR. GOLDMAN: What we're doing is eliminating
16 the issue--

17 THE COURT: The issue of whether or not what
18 was being done was an investment contract.

19 MR. S. RAUCH: Your Honor, as a practical
20 matter, the United States--if the United States Attorney
21 agrees, wouldn't it be more profitable, atleast to the
22 defense I must say, to eliminate those counts entirely
23 and to permit the U.S. Attorney to introduce all the
24 evidence he would have introduced them on?

25 THE COURT: Under the similar acts rule?

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2 MR. WOODFIELD: I would object to that, Your
3 Honor. Reluctantly, but I would, I would have to
4 object.

5 THE COURT: You think you have a stronger case
6 with fifteen claims than ten?

7 MR. WOODFIELD: That's not my point. But the
8 point is the Government is entitled to proceed on those
9 counts at this point, although there is a question on
10 the issue of securities, whether it is going to delay
11 the proceedings and if we could eliminate these things
12 we could move along. I'm not in a position to just
13 dismiss them and avoid the problem of securities. I'm
14 in full agreement in attempting to change them.

15 THE COURT: You'd be willing to do that, if the
16 Defendants agreed to it?

17 MR. WOODFIELD: Yes.

18 MR. GOLDMAN: What would it do to our sequence,
19 it doesn't change anything, does it?

20 THE COURT: It would change nothing except it
21 would take out of the case the issue of whether there
22 was a selling of coins or investments.

23 MR. GOLDMAN: How will that be done, will a
24 new indictment be drawn?

25 THE COURT: Mechanically.

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2 MR. GOLDMAN: Yes?

3 THE COURT: I think what we would do is have
4 a partially superseding information as to counts
5 eleven through fifteen, and a waiver of indictment as
6 to those counts and dismiss the underlying counts
7 eleven through fifteen.

8 MR. GOLDMAN: Do we have to respond to it?

9 MR. S. RAUCH: You have to consent to it.

10 THE COURT: Only in the sense officially you've
11 got to enter a plea to it.

12 MR. GOLDMAN: You mean an arraignment?

13 THE COURT: Yes. It can be done at the start
14 of trial. There will be no problem.

15 MR. GOLDMAN: Of course not in front of the
16 Jury.

17 THE COURT: That's correct. Not in front of
18 the Jury. Also we have a formal waiver of indictment,
19 because they feel it necessary I presume?

20 MR. WOODFIELD: Yes, Your Honor. But, this
21 would be the proceeding. The morning we commence the
22 trial, it will be done out of the presence of the
23 Jury.

24 MR. GOLDMAN: Let me address myself to the
25 Judge, no disrespect to you. By waiving any portion

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2 of the indictment, I don't know what that does to
3 the defendants appeal. If we waive it, we can't
4 ever bring it up.

5 THE COURT: What you're waiving would be the
6 right to have the mail fraud counts under eleven through
7 fifteen presented to the Grand Jury. You would be
8 consenting to have them prosecuted by way of information
9 rather than indictment. That is all.

10 MR. S. RAUCH: Is there any essential differ-
11 ence, Sir, in the heart of the last five counts rather
12 than of the first ten counts?

13 THE COURT: I don't think so and that's why
14 I made the suggestion. The only difference is it has
15 the additional issue of whether what it is that was
16 being sold here is a security.

17 MR. S. RAUCH: Yes?

18 THE COURT: And it is a nasty issue, I agree
19 with you, Mr. Rauch.

20 MR. S. RAUCH: God forbid there is a conviction,
21 that thing would wind up three years later in the
22 Supreme Court with untold gray hairs and time and
23 everything if the Government is entitled to get a
24 conviction and they should get it and make it easy for
25 themselves.

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2 THE COURT: My view is if they can prove
3 everything but the security element they've still
4 proved the mail fraud case. So, why not be happy
5 with that and save everybody's time?

6 MR. GOLDMAN: Why not dismiss those five
7 counts?

8 MR. S. RAUCH: We would consent, whatever the
9 reasons may be, Mr. Woodfield isn't willing to do that.
10 Although he's willing to take out the security aspect.

11 MR. GOLDMAN: Is this a final decision by
12 you?

13 MR. WOODFIELD: Yes. I have thought about it
14 and I couldn't dismiss those counts, but I'm willing
15 to transform them into mail counts and eliminate the
16 issue of security. But, I would not consent to any
17 dismissal.

18 MR. GOLDMAN: Your Honor, I would like that
19 done as soon as possible and once that is done we have
20 fifteen counts of mail fraud and I also must say I
21 must reserve the Defendants' rights to do whatever
22 they think should be done with reference to the counts.

23 THE COURT: I don't understand what you mean?

24 MR. GOLDMAN: I may want to make a motion to
25 dismiss the counts.

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2 THE COURT: You've already made such motions
3 and they were denied.

4 MR. GOLDMAN: Your Honor, you have five new
5 counts, mail fraud instead of SEC counts.

6 Now, if they duplicate the first ten, I say
7 now I don't want to--if I'm misleading the Court, I
8 don't know, I haven't studied the problem. I may want
9 to make a motion thereafter to dismiss those counts as
10 being duplicative and redundant and duplicating work
11 that is unnecessary.

12 THE COURT: That motion, consider it made now,
13 and I will deny it. Because, they would be duplicative
14 only in the event they repeated the same people and
15 they do not here. I think you are quite right in terms
16 of the overall impact of this case when it comes down
17 to sentencing for example. If there is a finding of
18 guilty, whether it is on one count or five counts or
19 fifteen counts, it possibly isn't going to make much
20 difference as to the final outcome.

21 Mail fraud cases always seem to come out in a
22 multi-count indictment but it's really essentially a
23 single scheme with some kind of thread of common plan
24 running through it. Otherwise, I guess you don't make
25 out a case.

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2 MR. WOODFIELD: That is true, Your Honor.

3 THE COURT: You are agreeing then to modify the
4 counts eleven through fifteen and change them to mail
5 fraud?

6 MR. S. RAUCH: I would ask the U.S. Attorney
7 again to reconsider his position, if possible. I think
8 the whole thing should be a little matter of give and
9 take. We should try to reduce the issues where ever
10 possible with an outright dismissal of the count and
11 with a concession that the evidence which is admitted
12 under those counts would be admitted. I don't think
13 there will be a consent on it, but I'm thinking of the
14 issues that we have here and this is a proposal for
15 the further elimination of the issues.

16 MR. GOLDMAN: I for one don't understand.

17 MR. S. RAUCH: I think this. I think not only
18 is the last five counts in a very great sense, if not
19 totally--

20 MR. GOLDMAN: The Judge just indicated they are
21 other witnesses, but they're making doubly certain.

22 MR. S. RAUCH: But the Judge and the U.S.
23 Attorney would be permitted to bring the law--to bring
24 in the evidence from those five as being the same type
25 of conduct. So, that actually he would be able to bring

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2 in the evidence, he's not precluding himself from
3 introducing any evidence that the Judge thinks--

4 MR. GOLDMAN: What are you consenting to?

5 MR. S. RAUCH: What I'm saying is this. I'll
6 ask the U.S. Attorney again to please reconsider his
7 thought again for the sake of narrowing the issues.
8 Dismiss that entire last five counts and then ask us
9 for some concession and I think we're willing to con-
10 cede a lot of things.

11 MR. GOLDMAN: He wants to bring in those other
12 witnesses.

13 THE COURT: He can bring them in anyway.

14 MR. S. RAUCH: He can bring them in anyway.

15 THE COURT: Whether we have the ten counts or
16 fifteen counts.

17 MR. GOLDMAN: Why don't you eliminate those
18 five counts, they're only duplicative.

19 THE COURT: Up to this point Mr. Woodfield says
20 he doesn't think he can. It's not up to me to comment
21 on the impact or of the Jury of ten or fifteen counts.
22 The U.S. Attorney may think it is impressive.

23 MR. WOODFIELD: It could be, but the point is
24 I really couldn't dismiss those counts.

25 THE COURT: So, the answer to your further request,

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2 Mr. Rauch, is that he's not willing to do it at this
3 point. But he will eliminate the securities violation
4 change them to mail fraud.

5 MR. S. RAUCH: I would urge Sam now to go along
6 with that, consent to eliminating the securities part
7 of it and let's try the case on the general mail
8 fraud.

9 THE COURT: And change these last five counts
10 to mail fraud counts?

11 MR. S. RAUCH: Yes, Your Honor.

12 THE COURT: Is that agreeable to you?

13 MR. S. RAUCH: It certainly is.

14 THE COURT: Mr. Goldman, is that agreeable to
15 you?

16 MR. GOLDMAN: Yes.

17 THE COURT: I think, Mr. Woodfield, what you
18 should do is have them retype the indictment.

19 MR. WOODFIELD: Actually the only thing I would
20 be doing, to think out loud, to save time at the end,
21 removing the pages five and six and seven from the
22 indictment. Well, actually I'm sorry. Remove five
23 and six from the indictment and just insert page seven
24 after count ten and we have page five--actually just
25 adding the mail counts from ten on. Is that correct,

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do you understand what I'm saying?

THE COURT: No.

MR. WOODFIELD: Just eliminating these pages.

THE COURT: Not quite.

MR. WOODFIELD: Bottom of page five and six
and just adding what is actually stated on page seven
after count ten.

THE COURT: Because six through ten are receipt
through the mail. One through five are sending.

MR. WOODFIELD: And eleven through fifteen are
sending.

THE COURT: What you could do very easily would
simply be this. Do a superseding information and add
after eleven through fifteen, then stop after the se-
cond list. Now, you have six through ten.

MR. WOODFIELD: By superseding you mean the whole
indictment?

THE COURT: Put it into one piece of paper.

MR. GOLDMAN: And call it an information in-
stead of an indictment?

THE COURT: Correct. You call it a superseding
information.

MR. GOLDMAN: Now you've got me. What happens
to the motion to dismiss the indictments?

1
2 THE COURT: You would not be affected by it.
3 It is a formal change only. The motion you made is
4 still directed to the information.

5 MR. GOLDMAN: Well, Mr. Rauch Pro Se is right
6 now in the process---in fact, he has a draft. He's
7 in the process of making a motion mainly on one point.
8 That is to dismiss the indictment and I was going to
9 ask you, since normally your Clerk tells me that you
10 hear motions in criminal matters only on the first or
11 third of the month--

12 THE COURT: First and third Thursdays.

13 (Continued on next page.)
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1 THE COURT: How about Mr. Rauch's argument as
2 to the lack of evidence as to his involvement in the
3 situation?

4 MR. WOODFIELD: I would start it with the
5 testimony of Al Cito, and I think it is clear from his
6 testimony with regard to the fact that Mark, Larry and
7 Sol, shared office space, that they had long meetings
8 in their offices behind closed doors in which policy
9 changes in the business came about. The four or five
10 meetings that Mr. Cito did attend in those offices,
11 were conducted by Sol Rauch. During those meetings
12 conducted by him, they discussed strategy and the
13 profits of the business and other business operations.
14 With regard to the testimony of Al Cito, his memo of
15 August 7th which was actually distributed to Sol Rauch
16 as well as Mark and Larry, clearly puts him on notice
17 as to the difficulties as to the business at that time,
18 as of August 7th, and in fact there was a meeting held
19 thereafter involving Sol Rauch where the difficulties
20 were discussed. He had actual knowledge at that time
21 that something was wrong with the business. Also Sol
22 Rauch we know now attended an ANA Convention in Chicago,
23 which they attempted to allege through the Government's
24 witnesses, was one of their big sale operations.

With regard to Mr. Rauch there was the testimony

1 of Barbara Wisniewsky where he learned about her
2 difficulties with regard to an investment.

3 We had the testimony of Angel Pieroni, which
4 should be interpreted in favor of the Government, that
5 is through the attempted payment by Mr. Sol Rauch on
6 that occasion of Angel Pieroni, even though it be
7 after the time alleged in the indictment as to the
8 scheme. It shows a consciousness of guilt on the part
9 of Sol Rauch as to the scheme.

10 Moreover, the testimony of Mr. Nagelberg clearly
11 showed that Mr. Rauch actually held the purse-strings
12 of the corporation, that is he was the one who had
13 to give the final okay for any travel arrangements that
14 would be charged to the company, and that was a set
15 policy that he set. We also learned from Mr. Nagelberg
16 that Sol Rauch traveled for Federal Coin Reserve on
17 occasion. Through the testimony of Dave Soffler we
18 learned not only monies were paid to Sol Rauch, and they
19 can characterize that in any term that the defendants
20 wish to characterize it, but what is important is the
21 pattern of the payments and that is that Mark, Larry
22 and Sol all received the same amount of money, and
23 dovetailed throughout the year in a very similar pattern
24 I suggest, your Honor, an inference can be drawn from
25 that, that those are the three principals of the company

1 I think from that evidence, the inference can be
2 drawn that Sol Rauch was an active participant in the
3 decision making process of the company, that he was
4 aware of the business activities and the profits of
5 the company . He was on actual notice halfway through
6 the scheme at least as to the difficulties or some of
7 the difficulties of the company. The consciousness
8 of guilt aspect with regard to Pieroni's involvement
9 in Sol Rauch's attempt to pay him money . Again, the
10 Government contends that it is obvious -- the relation-
11 ship of the three participants -- that is his son,
12 his son-in-law and himself, and that he oversaw the
13 operation, that he controlled the purse-strings, that
14 he was the one they went to for advise, that he was
15 acutely aware of the operation and clearly aided and
16 abetted in that operation.

17 THE COURT: Is there anything to show his
18 awareness of what it is the Government charges here
19 is a misrepresentation to customers?

20 MR. WOODFIELD: Well, for instance I believe
21 the testimony of Al Cito, concerning the printing
22 of the blue brochure, and Mr. Cito testified that he
23 met with Mark, Larry and Sol and stated that he thought
24 this was too expensive an item, and on that occasion
25 Sol Rauch said "no, that's the impression we want to

1 leave. We do not care about the cost." I think there
2 are inferences such as that and incidents such as
3 the meetings he ran when policy decisions and
4 strategy decisions of the company were discussed. It
5 puts him on notice as to the company's activities.
6 He knew of the blue brochure, and I think from that
7 he can be charged with knowledge as to what was in
8 that. He aided and abetted in the running of the
9 company and he would be charged with the activities
10 of the salesman on an agency theory, your Honor.

11 THE COURT: Anything further?

12 MR. WOODFIELD: No, thank you.

13 THE COURT: I have already indicated that
14 Mr. Goldman's motion Number 7, with respect to the
15 Walter's count of the information is granted.

16 Motion Number 18 denied with leave to make the
17 motion on papers.

18 Motion Number 23 with respect to a mistrial,
19 based on the limitation of the cross-examination
20 of Mr. Stack is denied. In that connection, Mr. Goldman
21 criticized the cross-examiners ineptitude, he described
22 without using the term, of Mr. Mark Rauch. I do not
23 agree with that characterization. I thought Mr. Mark
24 Rauch's cross-examination of Mr. Stack was excellent.
25 He may have missed his calling. He was well organized

1 and moved quickly from one subject to another and I
2 thought covered the ground quite well.

3 As to the other motions and general comments:

4 First, the Government is entitled to every
5 favorable inference at this stage of the trial.

6 Secondly, the motions directed by Mr. Goldman
7 to the first 15 counts of the indictment seem to be
8 premised upon the assumption that the guilt or innocence
9 of the defendants depends upon whether the victims,
10 as they have been termed might have a civil action
11 for recovery of damages. That is a misapprehension of
12 the law under this section of Title 18. Actual
13 injury is not an element of the crime. It is necessary
14 only for the Government to establish that there was a
15 scheme to defraud, coupled with a specific intent,
16 and that the mails were used in furtherance of that
17 scheme. The use of the mails is not at issue. The
18 parties have acknowledged that the mails were used
19 in the operation of this business. The remaining
20 question for the jury to determine is whether there
21 was a scheme or artifice to defraud and whether there
22 was specific intent connected with it. I am not sure
23 conceptually whether the two concepts can be separated,
24 but we can at least talk about them as separate things.

25 With respect to whether or not there is sufficient

1 evidence in the record to find the existence of a
2 scheme or artifice to defraud, giving the Government
3 every favorable inference, I believe that the jury
4 could reasonably determine beyond a reasonable doubt
5 that there was such a scheme. The affect of the SEC
6 injunction is immaterial in determining whether or not
7 there was a scheme prior to the time of the injunction.
8 The period of the time charged in the information
9 ceases at the time of the SEC injunction. Most of
10 the arguments that are made with respect to the
11 specific counts involve either a misapprehension of
12 the applicable law or are directed to the weight,
13 rather to the deficiency of the evidence. With respect
14 to Mr. Goldman's additional motions, his motion for a
15 mistrial based upon the limitation of the cross-
16 examination of Miss Gisske about a conversation with
17 Mr. Gordon at a time other than the two covered on
18 direct examination and at a different period of time,
19 that motion is denied.

20 The motion to dismiss on the grounds that the
21 time of the devising of the scheme to defraud is too
22 vague and the scheme was necessarily terminated with
23 the receiving of the SEC subpoena in April of 1974,
24 that motion is denied.

25 Motion 19 and 21 with respect to the Soffler

1 chart, those motions are denied. The testimony as
2 pointed out by Mr. Woodfield made it clear that what
3 Mr. Soffler was talking about were payments to the
4 defendants as shown by the cash disbursements book.
5 He did not have the ledger from which to determine
6 how those payments were treated by the corporation
7 and the descriptive title at the top of the exhibit
8 with respect to those payments to or for the benefit
9 of the defendants was, I won't say explained, but the
10 error of the description was acknowledged by the
11 witness on the witness stand. I do not find any
12 prejudicial affect sufficient to warrant a mistrial
13 or dismissal due to a mislabeling of a chart, which
14 was thoroughly explained during the course of the trial.

15 Motion Number 22 for a mistrial, based upon
16 the sustaining of an objection to a hypothetical
17 question, that motion is denied.

18 I have already ruled on 23.

19 With respect to the Rauch preliminary motions
20 as to the deficiency of the proof, all the preliminary
21 motions -- I believe the first seven of -- go to the
22 claim that the Government has not made out a sufficient
23 case to permit it to go to the jury. I have already
24 ruled that in my opinion the jury could infer the
25 necessary elements of the crime with respect to all

1 of the counts in the indictment, except as to
2 Number 7.

3 Respect to the involvement of Mr. Rauch, that
4 problem has given me more concern during the course of
5 the trial than any other single problem. It appears
6 to me to be a close question.

7 The evidence which Mr. Woodfield cited is
8 indicating Mr. Rauch's involvement as either a
9 principal or aider and abettor under 18US Code §2,
10 are all matters which I have considered. I have also
11 considered that there is no direct connection in the
12 evidence thus far between Mr. Rauch and any customers,
13 other than with the one he spoke to in the washroom
14 and Miss Wisniewski where he identified himself as
15 an attorney. I have had no correspondence involving
16 Mr. Rauch brought to my attention. I have had no
17 telephone communications, other than the one with
18 Miss Wisniewski brought to my attention, where he
19 was involved in the direct day to day dealings of the
20 business. He appears to have been, what might be
21 described, as a top management level involvement with
22 the financing of the company. Certainly, the travel
23 expenditures and apparently long range planning type
24 decisions. He does not appear to have been involved
25 directly in the purchase of coins and the sale of

1 coins, the appraisal of coins, any particular promises
2 to customers, nor any particular dealings with salesmen.

3 Nevertheless, he did share offices. He attended
4 about half the meetings. He obviously participated
5 in discussions which were the most important aspects
6 of the operation of the business. The key question
7 is to me is whether he had knowledge of the alleged
8 fraudulent misrepresentations which were being made
9 by way of correspondence, brochures and telephone
10 conversations. As I said I believe it is a close
11 question, but the Government is entitled favorable
12 inference that can be drawn from the evidence. Taking
13 all the evidence, although I cannot say this time
14 that a jury could not rationally conclude that
15 Mr. Rauch was aware of what was going on, but if he
16 was there, there seems to be no doubt that he could be
17 found guilty as an aider and abettor of the activities,
18 although he may not have participated directly in them.
19 He certainly was aiding them with his financial advice,
20 with loans apparently which were made to the business,
21 so the motion is denied also with respect to Mr. Rauch.

22 Are the defendants ready to proceed?

23 MR. WOODFIELD: I would initially request that
24 any witnesses of the defendants, who are going to be
25 called, not remain in the courtroom while other

1
2 And again, not in any way indicating that that
3 justifies an exorbitant price. Because I think that
4 the evidence established, at least I hope it did,
5 certainly didn't contradict it, that if the grading
6 was one way, the price was accordingly, according to
7 the market, according to the conditions that existed.
8 And, of course, the very fact that it would be possible
9 for there to be a price or a grading that was not
10 satisfactory, was met for the first 7 months by the
11 guarantee and then met, maybe not as satisfactorily
12 met, during the remainder of the time, by the second
13 guarantee. But it was met.

14 People had a 15 day guarantee.

15 Ladies and Gentlemen of the jury, thank you
16 very, very much for being with us all this time. I
17 hope and I pray that you do return a verdict of
18 acquittal, of not guilty, and if you do, your trust
19 and your -- that verdict I -- I humbly and most
20 respectfully submit will not be misplaced, and it is
21 not misplaced. I thank you very much for being so
22 patient. Your Honor, thank you very much.

23 THE COURT: Thank you, Mr. Rauch. Mr. Woodfield?

24 MR. WOODFIELD: I'll just be a few minutes,
25 your Honor. More importantly, I'll direct that to you.

(Continued on next page.)

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Woodfield-rebuttal summation

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MR. WOODFIELD: (Continuing) There are a

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very few matters I would touch upon, but I do

4

want to touch upon those.

5

Mr. Rauch makes lengthy arguments concerning

6

the literature, how they don't scream out fraud.

7

Maybe I miss the point or maybe I didn't get it

8

across to you in summation, but I submit to you that

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to run a business is very similar to running a

10

fraud just like Mr. Rauch told us; that is, if

11

you're going to get people to invest in a company;

12

if you're going to induce money away from people,

13

you're not going to write a brochure such as

14

this (indicating) and say, "Send in your money.

15

We're going to rip you off." Of course not.

16

This is sent to doctors. All this material is

17

sent to intelligent people. It's subtle and it's

18

a fraud, but it's subtle. To get people to send

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money into a company, it takes some sophistication.

20

If you look at that literature, there's

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a lot of sophistication. No, the documents do

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not stand up and scream, "Fraud", like Mr. Rauch

23

would you you believe or have you believe I

24

attempted it to argue to you.

25

To make a fraud, you have to induce people to

1
2 invest money to give you money. Where is the
3 guarantee made? Were they made? Of course they
4 were. Were they honored? We have testimony they
5 were not. That's the fraud.

6 I submit to you that Sol Rauch's summation,
7 which took approximately two hours, was the
8 ultimate conclusion to this case, was the ultimate
9 conclusion to a fraud that was perpetrated by
10 Federal Coin Reserve. He told us that when this
11 case is over, that he's going to refund the
12 moneys to the people who are still out money from
13 Federal Coin Reserve.

14 Well, I submit that I really don't believe
15 Dr. Bracket should hold his breath. Nor Mr.
16 Walter, nor Barbara Wisniewski. But the real
17 fraud perpetrated in that summation as well as
18 Mr. Goldman's time that was spent in his summation
19 was their ability to deal with anything but the
20 simple facts in this case.

21 Think of the allocation of time they spent.
22 Think of Mr. Rauch's summation, how much time.
23 Well, the Government isn't on trial here. America
24 is not on trial here. The free enterprise system
25 isn't on trial here. Those defendants are on trial

Woodfield- rebuttal summation

(indicating). How much time did they spend on the simple basic issues in this case?

No, they would like to focus your attention anywhere but on the evidence that came forward from that stand from the customers and from the other witnesses. They attempted throughout the trial and now in their summations to put the blame anywhere but on themselves. They blame the SEC for enjoining them. They blame me for my inability to take accurate photographs; to cut corners.

Yes, I cut corners. We only had thirteen and with two additional ones at the end, 15 victim witnesses. We could have called 500 people and gotten a real good view of the company. Do you think that was necessary? Did you see a common pattern or threat through the individuals that the Government called?

Even more importantly, because, again, this was brought out through the cross-examination of Mr. Goldman. Yesterday, when Martin Siegel was on the stand, Mr. Goldman brought out the fact I initially asked about customers that he was aware of that may have made complaints or inquiries to him. Mr. Goldman brought out the fact

1 Woodfield's rebuttal summation

2 that a list was turned over to him from the SEC
3 that listed 70 customers who had one, either not
4 received coins, or two, had not received refunds --

5 MR. GOLDMAN: That's not the fact. I object,
6 it was brought out on direct examination right in
7 the book that a chart was drawn with 70 names by
8 the prosecution, not by me.

9 MR. WOODFIELD: Were it brought out on
10 direct --

11 THE COURT: The jury's recollection will
12 control as to when it was brought out.

13 MR. WOODFIELD: I submit to you it's not
14 too important who brought it out. It's important
15 of the fact that it was brought out. 70 people
16 the SEC gave to Martin Siegel that said they did
17 not receive coins, did not receive money. He
18 testified he received another 20, approximately,
19 letters and another dozen phone calls. That's up
20 to around a hundred. The Government could have
21 called all hundred, if you wished. I don't think
22 it's necessary.

23 MR. GOLDMAN: I'm sorry, your Honor, I'm
24 very sorry, I didn't interrupt until now. The
25 chart of 70 did not say that they were people who

Woodfield-rebuttal summation

didn't receive money or didn't receive coins.

THE COURT: Again, the jury's recollection will control. They can ask for the testimony to be read if they wish.

MR. WOODFIELD: Or I could read it to them, from page 3 through 300. Question and answer.

"Question: Are you aware of any other inquiries that were made of customers of Federal Coin Reserve?

"Answer: Yes.

"Question: To whom were they made?

"Answer: Well, I received a chart from the SEC which contained a list of about 70 customers who hadn't received either coins or money or both."

They would like to shift the blame anywhere but upon themselves. So, the SEC has taken a lot of heat. I've taken a lot of heat here. The local appraisers who low-balled throughout the country, they've taken a lot of blame. Herman Weinstein's taken blame, I don't know, because he died. Lipton has taken blame. The U.S. Postal Service has taken a beating, not only here through testimony, but through their self-serving letters they sent out to the customers explaining

Woodfield-rebuttal summation

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1 why they are not getting their coins, because of
2 faulty postal service.

3
4 They blamed the salesman for making
5 statements, but they didn't want to know what
6 those statements were. They blamed -- or at least
7 drew an inference of blame on Judge Platt when
8 Mr. Goldman states that he couldn't examine Miss
9 Gisske about other statements that Mr. Gordon
10 may have made and then they blamed the customers
11 themselves, the ultimate in this case is that they
12 blame the customers themselves. They blame Mr.
13 Bracket because he doesn't like New Yorkers.
14 They blame Mr. Calderone because he had revenge,
15 because he got beat out of a thousand bucks.
16 They blame Mr. Walter yesterday because he only
17 invested \$950 instead of \$1,000. They blame
18 Aquelina because he out-conned the con artists
19 and they blame Wisniewski for pestering Federal
20 Coin to get back her over \$3000 she's waiting for.

21 I submit to you, based on all the evidence
22 in this case, it's very clear if you focus upon
23 the issues in this case not be motivated by
24 sympathy, like the defendants would like to have
25 you consider, just on the evidence that's been

Woodfield-rebuttal summation

3625

presented from the witness stand, the defendants
are clearly guilty.

Thank you.

THE COURT: Thank you, Mr. Woodfield.

I think before we go into my instructions,
we better have some lunch. In view of the hour,
however, I'm going to ask you to have your lunch
in a half hour rather than an hour today. We'll
resume at twenty minutes after 2:00.

(Luncheon recess taken.)

United States Court of Appeals
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

against

SOL RAUCH, MARC RAUCH, LAWRENCE CORSA,

Defendants-Appellants,

and

MARVIN URBAN, a/k/a "MARTY GORDON",

Defendant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

State of New York,
County of New York,
City of New York—ss.:

DAVID F. WILSON, being duly sworn, deposes
and says that he is over the age of 18 years. That on the 31st
day of January, 1978, he served one copies of
Appendix of Appellant Sol Rauch on
Hon. David G. Trager, U. S. Attorney, the attorney
for Appellee
by delivering to and leaving same with a proper person in charge of
his office at 225 Cadman Plaza East
in the Borough of Brooklyn, City of New York, between
the usual business hours of said day.

David F. Wilson

Sworn to before me this

31st day of January, 1978.

Courtney J. Brown

COURTNEY J. BROWN
Notary Public, State of New York
No. 31-5472920
Qualified in New York County
Commission Expires March 30, 1978

United States Court of Appeals
FOR THE SECOND CIRCUIT

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Appellee,

against

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Defendants-Appellants,

and

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Defendant.

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County of New York,
City of New York—ss.:

DAVID F. WILSON, being duly sworn, deposes
and says that he is over the age of 18 years. That on the 31st
day of January, 19 78 he served one copies of
Appendix of Appellant Sol Rauch on
Jack Kaplan, Esq., the attorney
for Appellant Corsa
by delivering to and leaving same with a proper person in charge of
his office at 2 Wall Street
in the Borough of Manhattan, City of New York, between
the usual business hours of said day.

David F. Wilson

Sworn to before me this

31st day of January, 19 78.

Courtney J. Brown

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DAVID F. WILSON

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and says that he is over the age of 18 years. That on the 31st
day of January, 1978, he served one copies of the
Appendix of Appellant Sol Rauch on
Donald E. Nawi, Esq.

the attorney for the Appellant Marc Rauch
by depositing the same, properly enclosed in a securely sealed
post-paid wrapper, in a Branch Post Office regularly maintained
by the Government of the United States at 90 Church Street, Borough
of Manhattan, City of New York, directed to said attorney at
No. 29 Iselin Drive, New Rochelle () N. Y.,
that being the address designated by him for that purpose upon
the preceding papers in this action.

David F. Wilson

Sworn to before me this

31st day of January, 1978.

Courtney J. Brown

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